



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-12

For the meeting of: April 22, 2014

Date: March 27, 2014
To: Board of Supervisors
From: Phillip R. Crandall, Director *Barbara Lattaie for Phillip R Crandall*
Department of Health and Human Services-Mental Health
Subject: Second Amendment to Agreement with Diamond Drugs, Incorporated for Fiscal Years 2013-2014

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve and authorize the Chair to sign three (3) originals of the Second Amendment to Agreement with Diamond Drugs, Inc.; and
2. Direct the Clerk of the Board to return two (2) signed originals of the Second Amendment to Agreement with Diamond Drugs, Inc. to the Department of Health and Human Services (DHHS)-Mental Health Administration.

SOURCE OF FUNDING:

Mental Health Fund

DISCUSSION:

On August 13, 2013 the Humboldt County Board of Supervisors approved the Agreement between DHHS-Mental Health and Diamond Drugs, Incorporated for the period of September 1, 2013 through June 30, 2014. On September 1, 2013, the parties executed a First Amendment to Agreement for the purpose of incorporating an updated Business Associate Health Insurance Portability and Accountability Act (HIPAA) Agreement (Attachment 2). The Second Amendment before your Board increases the maximum payment

Prepared by Diane Goldsmith Harger, MA Administrative Analyst II CAO Approval *Amy Olsen*

REVIEW: Auditor *MSM* County Counsel *KR* Personnel _____ Risk Manager *DT* Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *Lovelace* Seconded by Supervisor *Bass*
Ayes *Sundberg, Lovelace, Bohn, Fennell, Bass*
Nays _____
Abstain _____
Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. C-12

Meeting of: August 13, 2013

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *April 22, 2014*
By: *[Signature]*
Kathy Hayes, Clerk of the Board

amount of the Agreement from \$150,000 (one hundred fifty thousand) to \$185,000.00 (one hundred eighty-five thousand dollars).

DHHS-Mental Health provides medications to Sempervirens, Psychiatric Emergency Services, Medication Support Clinics, Humboldt County Correctional Facility (HCCF), Regional Facility (RF), and Juvenile Hall (JH).

There has been an unanticipated increase in the number of patients served by DHHS-MH Sempervirens which accounts for the increased expenditure.

FINANCIAL IMPACT:

This Second Amendment will increase the Agreement's original maximum payment amount by \$35,000. The expenditure appropriation related to this amendment has been included in the FY 2013-14 adopted budgets for DHHS-Mental Health Jail Programs, Mental Health Services Act, Sempervirens / Psychiatric Emergency Services and Medication Support, budget units 1170-427, 1170-477, 1170-495 and 1170-498 respectively.

This Agreement supports the Board's Strategic Framework by protecting vulnerable populations and creating opportunities for improved health and safety.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Your Board could choose not to approve the recommendation; however doing so may result in patients not receiving medications they are prescribed thus potentially endangering their physical or mental health

ATTACHMENTS:

1. Agreement with Diamond Drugs, Incorporated for the period of September 1, 2013 through June 30, 2014.
2. First Amendment to Agreement with Diamond Drugs, Inc.
3. Three (3) originals of the Second Amendment to Agreement with Diamond Drugs, Incorporated for the period of September 1, 2013 through June 30, 2014.

**AGREEMENT
BY AND BETWEEN
HUMBOLDT COUNTY AND
DIAMOND DRUGS, INCORPORATED
FOR FISCAL YEAR 2013-2014**

This Agreement, made and entered into this 13 day of August, 2013, at Eureka, California, by and between the County of Humboldt (hereinafter referred to as COUNTY), a political subdivision of the State of California, and Diamond Drugs, Incorporated, aka Diamond Pharmacy Services, and/or Diamond Medical Supply, Diamond, RemedyRepack, SapphireHealth, and InnovaScript (hereinafter referred to as CONTRACTOR), a Pennsylvania Corporation. WHEREAS, COUNTY through its Department of Health and Human Services (DHHS) - Mental Health, desires to provide the pharmacy services;

WHEREAS, COUNTY is obligated to provide certain pharmacy services for eligible mental health patients;

WHEREAS, CONTRACTOR offers these services;

WHEREAS, CONTRACTOR is a licensed pharmacy possessing all requisite professional licenses and Drug Enforcement Agency (DEA) registration to provide medications in the State of California and contracts to provide services to mental health patients;

WHEREAS, CONTRACTOR in accordance with provisions of Chapter 9 of Division 2 of the Business and Professions Code, is a non-resident pharmacy licensed by the State of California;

WHEREAS, COUNTY wishes to engage CONTRACTOR to provide pharmacy services on behalf of itself and/or its clients/patients;

WHEREAS, CONTRACTOR wishes to provide such services to COUNTY as agreed to between the Parties;

NOW THEREFORE BE IT AGREED:

1. DESCRIPTION OF SERVICES:

CONTRACTOR agrees to provide all of the services set forth in Exhibit A, attached hereto and incorporated by reference. Said exhibit describes the work to be performed by CONTRACTOR under this Agreement.

2. COUNTY RESPONSIBILITIES

A. To pay to CONTRACTOR all fees for services rendered as outlined in Exhibit B to this Agreement.

B. To furnish all legally required medication and product order information to CONTRACTOR on any Formulary and Non-Formulary Medications prescribed for patients of the COUNTY.

3. NO TERMS NOT INCLUDED:

This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements of the parties.

4. TERM:

The term of this Agreement shall be from September 1, 2013 and shall continue through June 30, 2014, unless sooner terminated as provided herein.

5. TERMINATION:

A. Breach of Contract --- COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in its sole discretion, the determination is made that there is:

- i. An illegal or improper use of funds;
- ii. A failure to comply with any term of this Agreement;
- iii. A substantially incorrect or incomplete report submitted; or
- iv. Improperly performed service.

CONTRACTOR may immediately suspend or terminate its performance under this Agreement if COUNTY fails to pay any invoice more than 45 days past the date payment is due.

B. Without Cause --- This Agreement may be terminated by either party without cause as follows:

- i. If terminated by CONTRACTOR, termination shall require sixty (60) days advance written notice of such intent to terminate. This notice shall state the effective date of the termination.
- ii. COUNTY may terminate this agreement without cause upon sixty (60) days written notice; except that COUNTY shall take into consideration the welfare of the COUNTY's clients and patients and make allowance for the treatment needs of its clients and patients.

6. NOTICES:

Any and all notice(s) required to be given pursuant to the terms of this Agreement may be given personally or by registered mail addressed to either COUNTY or CONTRACTOR at the following addresses:

COUNTY: DIHS-Mental Health
Attention: Mental Health Director
720 Wood Street
Eureka, California 95501

CONTRACTOR: Diamond Pharmacy Services Medical Supply, Incorporated
645 Kolter Drive
Indiana, PA 15701

7. ATTORNEY FEE ON BREACH:

CONTRACTOR and COUNTY each agree that in the event any action, suit or proceeding be commenced to complete the performance of this Agreement or to seek damages for breach thereof, it will pay reasonable attorney's fees (including reasonable value of services rendered by County Counsel) to the prevailing party, to be awarded and fixed by the court, and to be taxed as cost and to be included in the judgment thereon rendered.

8. COMPENSATION:

COUNTY will reimburse CONTRACTOR for services pursuant to this Agreement not to exceed the maximum amount of One Hundred Fifty Thousand dollars (\$150,000.00). All costs incurred above the maximum amount will be the responsibility of the CONTRACTOR. It shall be the responsibility of CONTRACTOR to notify COUNTY in writing, at least six weeks prior to the date upon which CONTRACTOR estimates that the maximum amount will be reached. If the maximum amount cited above is reached, CONTRACTOR is no longer obligated to perform services unless and until additional funding is approved by COUNTY.

9. PAYMENT:

Specific payment terms and conditions are set forth in Exhibit B, attached hereto and incorporated herein by reference. CONTRACTOR shall submit invoices by the tenth (10th) working day for each month for medications dispensed in the preceding month.

The invoice shall include copies of all billing receipts for the preceding month.

Invoices shall contain the following information for each prescription filled:

- A. Eligible recipient's name or "house stock"
- B. Service Date
- C. Prescription number
- D. Drug description, name, strength, and dosage form
- E. Quantity dispensed
- F. Prescriber's name
- G. Net prescription billing
- H. Pharmacist wholesale cost per 100 or per pint
- I. Total cost to COUNTY

If State, Federal or County funding are reduced or deleted, the maximum reimbursement shall be reduced or deleted.

10. NO WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. County shall have the right to demand of the CONTRACTOR the repayment of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance

with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

11. AUDITS:

CONTRACTOR shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under this Agreement pursuant to Government Code Section 8546.7. CONTRACTOR shall hold COUNTY harmless for any liability resulting from said audit.

12. REPORTING:

CONTRACTOR agrees to provide COUNTY with any reports that may be required by County, State or Federal agencies for compliance with this Agreement.

13. MONITORING:

CONTRACTOR agrees to extend to the DHHS-Mental Health Director, the State Department of Health Care Services or their designees, the right to review and monitor records, programs or procedures, at any time, in regards to clients, as well as the overall operation of CONTRACTOR'S programs in order to ensure compliance with the terms and conditions of this Agreement.

14. ASSIGNMENT:

Neither party shall assign its obligations under this Agreement without the prior written consent of the other party. Any assignment by CONTRACTOR in violation of this provision shall be void and shall be cause for immediate termination of this Agreement.

15. SUBCONTRACTING:

CONTRACTOR shall not subcontract for any services without prior written approval of COUNTY. For purposes of this paragraph, Back-up Pharmacy Services, Consulting

Pharmacists, and Shippers, Carriers, and/or delivery services shall not be considered "Subcontracting." For purposes of this paragraph, Back-up Pharmacy Services, Consulting Pharmacists, and Shippers, Carriers, and/or delivery services shall not be considered "Subcontracting".

16. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture, or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, retirement benefits, worker's compensation and injury leave or other leave benefits.

17. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

CONTRACTOR certifies by its signature below that CONTRACTOR is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR becomes a Nuclear Weapons Contractor.

18. COMPLIANCE WITH LAWS:

CONTRACTOR agrees to comply with all applicable local, State and Federal laws and regulations, including but not limited to the Americans with Disabilities Act. Compliance

with the Americans with Disabilities Act, includes, but is not limited to, the following areas:

- A. Whatever written information is provided regarding its programs will also be provided in alternate formats, including Braille, large print audio recording, and electronic formats, upon request.
- B. Enter into contracts or make other arrangements with qualified sign language and oral interpreters to ensure their availability when required for effective communication with persons who are deaf or hard of hearing. The type of aid that will be required for effective communication will depend on the individual's usual method of communication, and the nature, importance, and duration of the communication at issue. In many circumstances, oral communication supplemented by gestures and visual aids, an exchange of written notes, use of a computer or typewriter, or use of an assistive listening device may be effective. In other circumstances, qualified sign language or oral interpreters are needed to communicate effectively with persons who are deaf or hard of hearing. The more lengthy, complex, and important the communication, the more likely it is that a qualified interpreter will be required for effective communication with a person whose primary means of communication is sign language or speech reading.
- C. If CONTRACTOR operates a hotline to take telephone calls of an emergency nature, the Contractor shall ensure that it provides equivalent service for persons who use TTY's including providing direct-connection service for TTY users with hotline operators, without requiring TTY users to call through a third party operator, such as through the State or local Telecommunication Relay procedures, and provide the training necessary to ensure effective communication by Hotline staff with direct-connection

callers using TTY's, as well as the training necessary to respond to callers who use the Telecommunication Relay Services.

- D. Survey facilities used as shelters or designated as potential shelters - or for counseling, job training, education, clothing or household provisioning, or other aspects of programs- to ensure that adequate arrangements are available for potential clients and family members with disabilities, including adults and children who have mobility impairments, who are blind or have low vision, and who are deaf or hard of hearing.
- E. Have written procedures and modify, as appropriate, eligibility criteria, to ensure that no person with a disability is turned away from a shelter or otherwise denied the opportunity to benefit from the services of CONTRACTOR'S program on the basis of disability.
- F. Have written procedures to ensure that persons with disabilities who use service animals are not denied or discouraged from participating in CONTRACTOR'S program, are able to be housed and served in an integrated environment, and are not separated from their service animals while participating in the program even if pets are normally not permitted in the facilities where such programs are conducted. The procedures will not unnecessarily segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals.
- G. Have written procedures to ensure that reasonable modifications are made to the CONTRACTOR'S program when necessary for a client or family member with a disability to participate in such programs, unless doing so would fundamentally alter the nature of the program.

H. Have written policies to ensure that despite any "drug-free" policy of the CONTRACTOR'S program, persons with disabilities who use medication prescribed for their use are able to continue using such medication while participating in such Programs or being housed in a shelter.

CONTRACTOR agrees that all professional level persons employed by CONTRACTOR have met applicable professional licensure requirements pursuant to the California Welfare and Institutions and Business and Professions Codes.

CONTRACTOR further agrees to comply with any applicable Federal, State or local licensing standards, any applicable accrediting standards and any other applicable standards or criteria established locally or by the State or Federal governments.

CONTRACTOR agrees to comply with applicable provisions of any Mental Health Plan contract between the Department of Health Care Services and COUNTY.

19. VENUE AND APPLICABLE LAW:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395.

20. REFERENCE TO LAWS AND RULES:

In the event any law, regulation or policy referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

21. NONDISCRIMINATION:

- A. Consistent with the requirements of applicable Federal or State law, CONTRACTOR will not engage in any unlawful discriminatory practices in the admission of patients, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics) mental or physical disability (including HIV status and AIDS), military service, or any other classifications protected by federal, state, or local laws or ordinances.

- B. During the performance of this Agreement, CONTRACTOR and its subcontractors will not unlawfully discriminate against any employee or applicant for employment because of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics) mental or physical disability (including HIV status and AIDS), military service, or any other classifications protected by federal, state, or local laws or ordinances. CONTRACTOR and its subcontractors will comply with the Disabilities Act of 1990, the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the

applicable regulations promulgated thereunder (Title 2, CCR, Section 7285 et seq.). CONTRACTOR will ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5, Division 4 of Title 2, CCR, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors will give written notice of their obligation under this clause to labor organizations with which they have a collective bargaining or other agreement.

- C. CONTRACTOR will comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Welfare Agency, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.
- D. CONTRACTOR will include the nondiscrimination and compliance provisions of this Agreement in all subcontracts to perform work under this Agreement.

22. RECORDS:

CONTRACTOR shall maintain statistical, clinical and financial records in the manner provided by the State Health and Welfare Agency and make such records available to COUNTY as required by the DHHS-Mental Health Director, and the California State Health and Welfare Agency.

- A. Fiscal Records — if applicable, CONTRACTOR shall maintain accurate records of its costs and operating expenses. Such records of costs, expenditures and reimbursements shall be maintained for at least five (5) years from the close of the State's fiscal year during which services were provided, or until audit findings are resolved, whichever is later. Such records shall be open to inspection by the DHHS-Mental Health Director, the Humboldt County Auditor-Controller, the Humboldt County Grand Jury, the State Controller, the State Director of the Department of Health Care Services or any of their designees.
- B. Clinical Records — if direct patient or client treatment services have been provided, CONTRACTOR shall maintain accurate and legible clinical/medical records in accordance with the DHHS-Mental Health Medical Records Policy and Procedures. CONTRACTOR shall maintain medical records for at least seven (7) years from the close of the State's fiscal year during which services were provided, except that the records of persons under age eighteen (18) at the time of treatment shall be maintained: a) until one (1) year beyond the person's eighteenth (18th) birthday or b) for a period of seven (7) years beyond the date of discharge, whichever is later. All such records shall be considered confidential patient records in accordance with California Welfare and Institutions Code, Section 5328, regarding patient confidentiality. Clinical records shall contain sufficient detail to make possible an evaluation by the DHHS-Mental Health Director or designee or the State Department of Health Care Services, and shall be kept in accordance with the rules and regulations of the California Code of Regulations, Title XXII.

23. CONFIDENTIALITY OF RECORDS:

In the performance of this Agreement, CONTRACTOR may receive confidential information. CONTRACTOR agrees to protect the confidentiality of all DHHS- Mental Health clients and patients in conformance with, but not limited to, California Welfare and Institutions Code Sections 827, 5328, and 10850, the California Confidentiality of Medical Information Act, California Health & Safety Code sections 1280.15 and 130203 as applicable, the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the United States Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), and their implementing regulations, including as appropriate Title 45 of the Code of Federal Regulations Section 205.50.

COUNTY and CONTRACTOR acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. CONTRACTOR agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations.

CONTRACTOR shall comply with applicable privacy, security, and confidentiality requirements under any Mental Health Managed Care contract COUNTY has with the State Department of Health Care Services.

24. INSURANCE REQUIREMENTS:

- A. THIS AGREEMENT SHALL NOT BE EXECUTED BY COUNTY and the CONTRACTOR is not entitled to any rights, unless certificates of insurances, or

other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the Clerk of the Humboldt County Board of Supervisors.

B. Without limiting CONTRACTOR'S indemnification obligations provided for herein, CONTRACTOR shall and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of CONTRACTOR, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of One Million Dollars (\$1,000,000.00) per occurrence for any one (1) incident, including, personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.
2. Automobile/Motor liability insurance with a limit of liability of not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include of all "owned", "hired", and "non-owned" vehicles or coverage for "any auto".

3. Workers Compensation and Employer's Liability Insurance providing worker's compensation benefits as required by the Labor Code of the State of California or if CONTRACTOR has no employees in the State of California, then in accordance with the laws of the State where CONTRACTOR is domiciled. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees. In all cases, the above insurance shall include Employers Liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and disease.
4. Professional liability insurance/errors and omission coverage in an amount no less than One Million Dollars (\$1,000,000.00) for each occurrence (Three Million Dollars [\$3,000,000.00]) general aggregate). Said insurance shall be maintained for the statutory period during which the professional may be exposed to liability. CONTRACTOR shall require that the aforementioned professional liability insurance coverage language be incorporated into its contract with any other entity with which it contracts for professional services.
5. Insurance notices sent to:
County of Humboldt
Attn: Risk Management
825 5th Street, Room 131
Eureka, CA 95501

C. Special Insurance Requirements.

Said policies shall unless otherwise specified herein be endorsed with, the following provisions:

- (1) The Comprehensive General Liability Policy shall provide that the COUNTY, its officers, officials, employees and volunteers, are covered as additional insured for liability arising

out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:

- a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards".
 - c. Is primary insurance as regards to County of Humboldt.
 - d. Does not contain a pro-rata, excess only, and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
- (2) The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the Notice provisions set forth under Section 5. It is further understood that CONTRACTOR shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.
- (3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

- (4) For claims related to this project, the CONTRACTOR'S insurance is primary coverage to the COUNTY, and any insurance or self- insurance programs maintained by the COUNTY are excess to CONTRACTOR'S insurance and will not be called upon to contribute with it.
- (5) Any failure to comply with reporting or other provisions of the Parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, officials, employees, and volunteers.
- (6) CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by the COUNTY's Risk Manager or COUNTY Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to and approved by COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof from the monies owed to CONTRACTOR under this Agreement.
- (7) COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered and CONTRACTOR shall be required to purchase additional coverage to meet the aggregate limits set forth above.

25. HOLD HARMLESS/INDEMNIFICATION AGREEMENT:

- A. CONTRACTOR shall indemnify, defend and hold harmless COUNTY and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with CONTRACTOR'S duties and obligations under this Agreement and any amendments hereto.
- B. COUNTY shall indemnify, defend and hold harmless CONTRACTOR and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with COUNTY's duties and obligations under this Agreement and any amendments hereto.
- C. Notwithstanding paragraphs A and B, in the event that CONTRACTOR and COUNTY are both held to be negligently or willfully responsible, CONTRACTOR and COUNTY will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorney's fees.
- D. Acceptance of insurance, if required by this Agreement, does not relieve CONTRACTOR from liability under this indemnification clause. This

indemnification clause shall apply to all damages or claims for damages suffered by CONTRACTOR's operations regardless if any insurance is applicable or not.

26. INFRINGEMENT INDEMNITY:

In the event of a claim or suit against COUNTY alleging (a) the software as licensed by CONTRACTOR or (b) COUNTY's use of the software as licensed by CONTRACTOR infringes any patent issued by or copyright registered in the country in which the software was licensed to COUNTY, CONTRACTOR shall defend COUNTY to the extent the claim or suit concerns such infringement, provided COUNTY gives CONTRACTOR prompt notice of such claim or suit and continuous cooperation in such defense.

In any claim or suit against COUNTY that is defended by CONTRACTOR pursuant to this Section, CONTRACTOR shall control the defense, shall pay all litigation costs, including attorney's fees incurred by COUNTY in such defense, and shall indemnify COUNTY for all damages awarded by a court or settlement payments approved by CONTRACTOR.

If in any claim or suit against COUNTY that is defended by CONTRACTOR pursuant to this Section, as a result of a court order not subject to further appeal or a settlement approved by CONTRACTOR, COUNTY is enjoined or otherwise prevented from using the software as licensed by CONTRACTOR, CONTRACTOR, at its option, may (a) procure for COUNTY the right to continue using the software, (b) replace or modify the software to avoid infringement, or (c) repossess the software in exchange for a refund of the depreciated value of the software. CONTRACTOR's option selected under this Section shall be COUNTY's sole remedy for any prospective effects of any court order or

settlement. CONTRACTOR's total, cumulative liability under this Section shall be limited to the price paid to CONTRACTOR by COUNTY for the software

27. MEDIA RELEASE:

All press releases and informational material related to this Agreement shall receive approval from COUNTY prior to being released to the media (television, radio, newspapers, Internet). In addition, CONTRACTOR shall inform COUNTY of requests for interviews by media related to this Agreement prior to such interviews taking place. COUNTY reserves the right to have a representative present at such interviews. All notices required by this provision shall be given to the Director of the Humboldt County Department of Health and Human Services or his designee.

28. PROTOCOLS:

Both parties recognize that a number of protocols must be negotiated to make this Agreement specific. In regard to all such protocols, they shall be agreed to by COUNTY and the DHHS-Mental Health Director and CONTRACTOR.

29. DRUG FREE WORKPLACE CERTIFICATION:

By signing this Agreement, CONTRACTOR hereby certifies that CONTRACTOR will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

- B. Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. CONTRACTOR'S policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide as required by Government Code Section 8355(a)(3) that every employee who works on the Agreement:
 - i. Will receive a copy of CONTRACTOR's drug-free policy statement, and
 - ii. Will agree to abide by the terms of CONTRACTOR's statement as a condition of employment on the Agreement or grant.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and CONTRACTOR may be ineligible for award of future State contracts if the Department determines that any of the following has occurred: (1) CONTRACTOR has made a false certification or, (2) violates the certification by failing to carry out the requirements as noted above.

30. PATIENTS' RIGHTS:

The parties to this Agreement shall comply with applicable laws, regulations and State policies relating to patients' rights.

31. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18), if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such Federal funds. The law does not

apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where Women, Infants and Children Program (WIC) coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to One Thousand Dollars (\$1,000.00) for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

32. UTILIZATION REVIEW:

COUNTY, through its DHHS-Mental Health Director, may designate a person(s) to perform a utilization and/or professional standards review of all patients for which it is expected to make reimbursement.

33. COST REPORT:

CONTRACTOR shall submit an unaudited end of the fiscal year final cost report summarizing all costs incurred providing services for COUNTY-linked patients during the fiscal year. This will occur no later than ninety (90) days following the close of the fiscal year. Final Cost Report shall meet the specifications of the mandated cost reporting requirements of COUNTY, pertaining to that fiscal year.

34. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the written mutual consent of both parties.

35. HIPAA REQUIREMENTS:

The "County of Humboldt HIPAA Business Associate Agreement", a copy of which is attached hereto and identified as Exhibit C, is hereby incorporated into this Agreement.

36. INTELLECTUAL PROPERTY:

COUNTY agrees that CONTRACTOR and its affiliated company SapphireHealth, LLC retains all rights, title, interest in and ownership, and reserves the right to use and control the use of its intellectual property rights in its assets including, but not limited to, its software, reporting packages and user documentation; operations, procedures and strategies; formulary and clinical services; manufacturer, wholesaler, group purchase, vendor contracts and resultant data and information; patient, prescription claim and drug utilization submission; trademarks and service marks. This Agreement creates no express or implied license for COUNTY to use such intellectual property for any purpose other than carrying out its responsibilities under this Agreement.

The CONTRACTOR agrees to adhere to the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the
day and date first above written.

ATTEST:

KATHY HAYES

Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: 

APPROVED AS TO LEGAL FORM:

By 
County Counsel

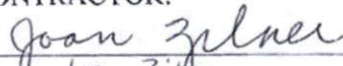
APPROVED AS TO INSURANCE:


Risk Manager

COUNTY OF HUMBOLDT:


Chair, of the Board of Supervisors

CONTRACTOR:


Name Joan Zilner

President
Title


Name Mark J. Zilner

Chief operating officer /
Title Secretary / Treasurer

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

1. CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
2. SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR
TREASURER

**EXHIBIT A
DESCRIPTION OF SERVICES
FOR AGREEMENT WITH DIAMOND DRUGS, INCORPORATED
FOR FISCAL YEAR 2013-14**

CONTRACTOR shall provide the following services described below in a manner consistent with the terms and provisions of this Agreement.

1. Pharmaceutical Services and Medical Supplies

CONTRACTOR shall provide comprehensive pharmaceutical services for prescription and non-prescription items required at COUNTY DHHS-Mental Health facilities. Such items include, but are not limited to, medications for topical, oral, and injectable use, inhalers, and suppositories. Generic substitutions and/or brand name medications, whichever are most cost effective, will be provided when available and approved by COUNTY prescribers. Only Federal Drug Administration (FDA) approved drugs, biologicals, and other related items will be sent to the facilities.

All medications will be labeled patient specific or stock based on prescribers as described in Paragraph 4(D) below and dispensed in full compliance with all current and future local, state, and federal laws, regulations, provisions, and court orders. CONTRACTOR will also provide consultant pharmacists who are available to COUNTY continuously for emergency and routine consultations twenty-four (24) hours a day, seven (7) days a week.

CONTRACTOR shall provide medical supplies as ordered including but not limited to medical supplies and sundries. CONTRACTOR has an online ordering and pricing system. Pricing information is also available by telephone from Customer Service. Medical supplies are shipped by ground or when possible, orders will be shipped with medication order. Shipping charges are included. COUNTY pays actual shipping cost for items that exceed size and weight restrictions. Next day shipping is available and COUNTY pays actual shipping cost.

2. Prescription Monitoring Services

Prior to filling prescription orders, CONTRACTOR'S clinical pharmacists shall screen each patient's complete computerized medication profile to ensure safe and therapeutic medication administration. CONTRACTOR shall screen for:

- Duplicate therapy
- Drug interactions
- Excessive/sub-therapeutic dosages
- A summary of all new and changed orders
- Patient drug allergies
- Medications that are being reordered too soon
- Medications ordered past the designated stop date
- Overall prescription order accuracy

CONTRACTOR shall alert DHHS-Mental Health Medical staff via phone or fax of such occurrences prior to shipping the order.

3. Formulary Implementation and Management

CONTRACTOR shall utilize the existing DHHS-Mental Health psychotropic formulary and shall work in conjunction with the COUNTY'S medical and mental health staff and the Pharmacy and Therapeutics Committee to evaluate additions or deletions of medications. CONTRACTOR will provide quarterly medication usage reports accompanied with graphs, cost comparisons, and drug indication for particular drug classes. The formulary will be reviewed and updated by COUNTY, if necessary, on a quarterly basis.

4. Ordering and Delivery of Medications

A. Ordering

COUNTY may place orders by phone, electronic ordering, or fax via CONTRACTOR'S toll-free number. CONTRACTOR agrees to provide the following: daily drug order sheet samples necessary for transmitting new order, reorders, changes, stop order, or discontinued orders, double peel- off labels for reordering, and any other supplies and materials required for ordering medications. CONTRACTOR also agrees to designate a pharmacy technician at CONTRACTOR'S location dedicated to processing COUNTY'S orders.

B. Delivery

All orders received by CONTRACTOR Monday through Friday by 1:00 p.m. PST will be shipped for FedEx next day delivery. Orders placed by 9:00 a.m. on Saturday will be shipped for FedEx next day delivery for Monday. Exception: FedEx does not ship on six (6) holidays per year, as listed below:

New Year's Day
Memorial Day
Independence Day Labor
Day
Thanksgiving Day
Christmas Day

CONTRACTOR will notify the Facility in advance of any changes in the schedule for ordering and/or delivery due to holidays.

Sunday deliveries will be provided through the local back-up pharmacy or pharmacies designated by COUNTY, with all charges billed as a pass through.

Emergency deliveries will be provided twenty-four (24) hours a day, seven (7) days a week via the back-up pharmacy or pharmacies. CONTRACTOR will coordinate the delivery of Sunday and emergency orders with the COUNTY-designated back-up pharmacy, which will deliver the medication directly to the appropriate COUNTY site, if requested with all charges billed as a pass through.

Each medication shipment from CONTRACTOR will contain detailed itemized packaging slips as a method of checking all items. Reports will be sorted in the format requested by COUNTY and will include, but are not limited to:

- Medication Delivery Report - printed alphabetically by patient and containing patient's name and number, date, medication name, strength, number of doses, prescription number, and stop date.
- Scheduled Items Report - containing all above information exclusively printed for controlled substances.
- Tracking - all next day air packages are tracked daily to ensure timely and accurate delivery.

C. Medication Administration System

In conjunction with DHHS-Mental Health staff, CONTRACTOR will provide and implement a specialized delivery system for each COUNTY site that will meet the COUNTY'S need for safe, efficient, accountable, feasible, and cost-effective medication administration. Prescription and non-prescription medications will be dispensed in unit-dose, patient specific, tamper-proof blister cards. CONTRACTOR shall dispense all prescriptions generically, unless there is no generic substitute.

Controlled substances will be dispensed in blister cards for easy accountability. CONTRACTOR shall dispense controlled prescription items in quantities not to exceed 30 days' supply. Prescriptions may be ordered in smaller quantities. This is subject to California's Board of Pharmacy regulations and the instructions of the prescribing practitioner.

D. Labeling

Each prescription will be labeled individually, with the patient's name and identification number, medication name and strength, generic interchange information, quantity dispensed, manufacturer's name, lot number, expiration date, route and times of administration, directions, patient location, prescription number, prescriber name, dispense date, stop date, and pharmacist's initials in accordance with all federal, state, and local laws and regulations.

Auxiliary warnings will be placed on each prescription where appropriate for safe and effective medication use.

E. Starter Packs (on-site start doses)

CONTRACTOR will provide starter packs of certain medications needed to begin therapy for immediate administration until a patient-specific prescription is received. Medications and stock quantities for starter doses will be determined in conjunction with COUNTY. An accountability sheet will accompany each starter pack. The medication may be reordered when needed by the COUNTY.

5. Documentation and Accountability

CONTRACTOR will maintain all appropriate documentation including, but not limited to, inventory records, patient profiles, copies of all prescriptions, etc. All documentation shall be open for review by appropriate COUNTY staff or appointed designee. CONTRACTOR will provide and implement a record keeping system for drug accountability at COUNTY sites.

CONTRACTOR will maintain extensive patient profiles and provide an accurate preprinted Medication Administration Record (MAR) once a month for each patient receiving medication, if requested and if not using an electronic MAR. The MAR will contain patient's name, allergies, diagnosis, physician's name, and current medication list with directions.

6. Protocols, Policies and Procedures

CONTRACTOR will assist in developing, implementing, updating, and monitoring of policies and procedures for safe and effective administration, control, and use of drugs. CONTRACTOR will provide COUNTY with a policy and procedure manual, updated yearly if necessary.

7. In-service Training and Continuing Education

CONTRACTOR will provide software, updates, initial training, and support needed to operate the Sapphire eMAR software.

CONTRACTOR will provide customized in-service training during their inspections, when requested on a variety of topics as mutually agreed upon by COUNTY and CONTRACTOR. The in-service trainings will include at a minimum: information regarding adverse reaction, drug interactions, basic review of the formulary, new and/or revised pharmacy laws, new medications, medication pass, and medication accountability.

8. Utilization Data

CONTRACTOR will provide any requested computer generated reports for psychotropics and utilization data. If requested, all reports can be sorted in order or groupings, including by prescribing physician. Available reports include, but are not limited to, the following:

- Patient drug allergy and drug interaction alert
- Monthly drug usage per unit
- Drug utilization report
- Monthly psychotropic usage report
- Computerized Medication Administration Record (MAR), available to COUNTY no later than the 26th day of each month for the following month on all patients who have prescribed medications
- Formulary vs. non-formulary medications dispensed
- High to low usage by dollar amount
- High to low usage by quantity dispensed
- Medication breakdown listed by specific physician
- Medication classification report
- Cost containment recommendation report
- Side-effect and drug interaction report
- Stop date report
- Invoices containing drug name, National Drug Code, and charge
- Numerous customized management/cost containment reports
- Medications set to expire monthly
- FDA bulletins for recalled and black box medications

9. Pharmacy and Therapeutics Committee

CONTRACTOR may serve as a member of the Pharmacy and Therapeutics Committee during their inspections or via conference call. CONTRACTOR will also be available to provide consultation to the prescribing physicians and nurses in relation to pharmaceutical therapy.

10. Quarterly Inspections

CONTRACTOR may provide onsite inspections by a registered consultant pharmacist at COUNTY sites on a quarterly basis or as required. During these quarterly visits, CONTRACTOR may:

- A. Assist in developing, implementing, monitoring, and updating COUNTY'S policies, procedures, and protocols for the safe, effective control, administration, and use of medications complying with all regulations of the COUNTY site.
- B. Ensure the site complies with all applicable state and federal regulations regarding procuring and administering pharmaceuticals.
- C. Set-up a system to ensure that all pharmaceuticals are tracked and recorded to show accountability.

D. Provide routine inspections to ensure that the site complies with all current pharmacy regulations.

E. Conduct an overall inspection of the medications room at the site.

F. Inspect the contents of the emergency medication kit and poison antidote kit and replace any outdated and/or deteriorated items.

G. Ensure compliance with all federal, state, and local laws and regulations regarding the guidelines of the California State Board of Pharmacy.

H. Provide the COUNTY with signed and dated documentation of quarterly inspections including recommendations made, corrective actions implemented or problems observed.

I. Assist COUNTY in the accounting, reconciliation, and disposal of unused controlled substances as allowed by federal, state, and local laws and regulations. Count sheets will be provided for strict accountability of controlled medications and all documentation will be enforced as required by law.

J. Inspect all areas relating to pharmacy including medication records, storage, and security.

K. Provide continual assessment of recommendations for implementation. This function will be completed through written quarterly inspection reports that are provided to the Medical Director and Director of Nursing for follow-up and evaluation of performance.

L. Meet and discharge all other required responsibilities, as set forth in federal or state laws, statutes, or regulations presently enacted, or may hereafter be enacted, as well as provide other detailed services applicable to the COUNTY sites.

11. Technology and Data Requirements

CONTRACTOR will work with the DHHS Information Systems staff to develop a mutually acceptable data system that will assure that all required data collected regarding pharmacy services provided under this Agreement will be electronically transferred into the DHHS-Mental Health Information System.

- CONTRACTOR shall provide the right to use one year single software license for the Sapphire eMAR software application for storing, analyzing, and reporting pharmaceutical usage.

- CONTRACTOR is authorized to grant the software license. CONTRACTOR warrants that to the best of CONTRACTOR's knowledge the licensed software does not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.
- Software to be installed following the execution of this Agreement.
- CONTRACTOR will contact the DHHS Information Services with the information necessary to set up and install the software on server through COUNTY'S DHHS Information Services.
- CONTRACTOR will provide software, updates, initial and ongoing in-person training, and support needed to operate the Sapphire eMAR software.
- CONTRACTOR will ensure there is no limit to the number of users that can use the Sapphire eMAR software application.
- CONTRACTOR will maintain and store transaction data as required by Federal and/or State regulations. If this Agreement is terminated, CONTRACTOR agrees to provide transaction history in an electronic format for COUNTY to continue using.
- CONTRACTOR will ensure phone and e-mail support during regular business hours, from 8 a.m. to 5 p.m. EST. 24/7 emergency support will be provided through an afterhours phone support system.
- Sapphire eMAR software will manage onsite stock inventory barcoded by CONTRACTOR.
- All Sapphire eMAR system downtime will be communicated through e-mail as well as a scrolling banner onsite at least seven (7) days in advance of the maintenance window.

12. Start-up and Transition Plan

CONTRACTOR will provide a written start-up plan and schedule that covers all aspects of the services provided under this Agreement including, but not limited to, the initial in-person in-service training of COUNTY staff prior to the change of service, a time frame for all transitional activities, resolution of identified problems, and related issues. CONTRACTOR will be provided prescription information, at each COUNTY site, set up a medication ordering/distribution system, obtain physician information, and provide any other materials, services and supplies that may be needed to assure the smooth and successful start-up, transition to, and operation of the pharmacy services detailed in this Agreement. CONTRACTOR will provide ongoing in-person training as needed to operate the Sapphire eMAR software.

EXHIBIT B INVOICING AND PAYMENT

FOR AGREEMENT WITH DIAMOND DRUGS, INCORPORATED

FOR FISCAL YEAR 2013-14

1. Compensation

For services rendered, the COUNTY will reimburse CONTRACTOR as follows:

A. Standard Prescriptions and Stock Pieces

Each prescription will be billed as follows:

1. Actual Acquisition Cost (AAC) up to \$9.99, AAC + 20%, Over the Counter (OTC) fee of \$4.50, Prescription (RX) fee of \$5.70
2. AAC up to \$20.00, AAC +20%, OTC and RX fee of \$4.00
3. AAC up to \$40.00, AAC +15%, OTC and RX fee of \$4.00
4. AAC up to \$80.00, AAC +12%, OTC and RX fee of \$4.00
5. AAC above \$80.00, AAC +10%, OTC and RX fee of \$4.00

Definitions:

- A. Actual Acquisition Cost (AAC): CONTRACTOR's direct, upfront cost of medications and medical supplies, equipment and devices.
 - B. Average Wholesale Price (AWP): The average wholesale price of a medication as published by Medispan.
 - C. Maintenance Medications: Medications prescribed to a patient for the treatment of a long-term, chronic condition.
 - D. Medical Supplies: Those items that are not regulated as prescription drugs by the FDA or DEA, and are not considered Over the Counter medications.
 - E. Over the Counter: Those medications which do not require a prescription
- B. Maintenance Medications will consist of fifteen (15) or thirty (30) day supply, and charges will be in accordance with the appropriate provision(s) above. CONTRACTOR reserves the right to increase the charges and dispensing fees of Maintenance Medications that are ordered in routine quantities less than a thirty (30) day supply.
- C. Medications will not be sold below cost.
- D. CONTRACTOR agrees to pay for all medication shipping costs.
- E. Medical supplies and sundries ordered will be included in the maximum agreement amount. CONTRACTOR has an online ordering and pricing system. Pricing information is also available by telephone to Customer Service. Medical supplies are shipped by ground or when possible, orders will be shipped with medication orders. CONTRACTOR

pays shipping charges except for items that exceed size and weight restrictions, COUNTY pays actual shipping cost. Next day shipping is available and COUNTY pays actual shipping cost.

- F. Returned Medication Credit: Credit will be issued on full or partial blister cards at 100% of the AAC. There will be no credit with a \$1.50 value or less. Credit will be issued on returned, non-controlled tablets or capsules remaining in the original 30-dose blister card or sealed bottle which contains a single dose per bubble, provided the medications are returned prior to 3 months of expiration, have not been released to the patient population, do not contain writing or are adulterated, and are permitted for return by the California State Board of Pharmacy and the U.S. Food and Drug Administration (FDA).

Controlled medications and opened partial stock medications cannot be credited per Federal regulations.

Returns received by CONTRACTOR, during the term of the Agreement, by the 15th of the month will be credited on the next invoice for that calendar month. Credit memos will be deducted from payment of the oldest outstanding invoices. Upon Agreement termination, any desired returns must be made within fifteen (15) days of Agreement termination. CONTRACTOR will not return any items returned by COUNTY not eligible for credit.

2. Invoicing and Payment Provisions

- A. Invoicing: CONTRACTOR will bill in the format and in the manner required by COUNTY. Invoicing will occur electronically monthly. CONTRACTOR will provide separate invoicing for medications and medical supplies/sundries. Payment shall be made by check by COUNTY and received at CONTRACTOR within thirty (30) days of acceptable invoice. A finance charge of 1.25% per month will be charged on all amounts received forty-five (45) days past the close of the billing cycle.
- B. It is COUNTY's responsibility to provide CONTRACTOR all appropriate and accurate patient and billing information prior to submitting orders. Billing other agencies is provided by CONTRACTOR as a courtesy and CONTRACTOR will not be responsible for any third Party claims which are not invoiced accurately due to COUNTY's failure to provide the correct patient billing information.

Pass through invoicing will be billed from CONTRACTOR to DHHS- Mental Health.

- C. It is COUNTY's responsibility to verify its invoices monthly to assure claims were billed to the proper agency on a monthly basis and inform CONTRACTOR of any discrepancies within fifteen (15) days of receipt of invoices.
- D. COUNTY is responsible for all applicable sales, use, lease, ad valorem, and any other tax
- E. that may be levied or assessed by reason of this transaction, unless COUNTY provides a tax exemption certificate (blanket or transaction specific) to CONTRACTOR in a timely manner.

F. Pay all invoices and other payments due to CONTRACTOR via check to:
Diamond Drugs, Inc. Diamond
Pharmacy Services P.O. Box 200796
Pittsburgh, PA 15251-0796

G. Send all invoices to:
Department of Health and Human Services
Mental Health Financial Services
507 F Street
Eureka, CA 95501

**EXHIBIT C
COUNTY OF HUMBOLDT
HIPAA BUSINESS ASSOCIATE AGREEMENT**

Recitals:

- A. COUNTY, as a "Covered Entity" (defined below) wishes to disclose certain information to CONTRACTOR, hereafter known as the "BUSINESS ASSOCIATE" (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. COUNTY 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 and Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires COUNTY to enter into an Agreement 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 contained in this Agreement.

The parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921],
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501
- e. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- f. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- g. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- h. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- i. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past,

present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501],

- j. **Protected Information** shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created or received by BUSINESS ASSOCIATE on COUNTY's behalf.
- k. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- l. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. Obligations of Business Associate

- a. **Permitted Uses.** BUSINESS ASSOCIATE shall not use Protected Information except for the purpose of performing BUSINESS ASSOCIATE'S obligations under the Agreement as permitted under the Agreement. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by COUNTY. However, BUSINESS ASSOCIATE may use Protected Information (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate [45 C.F.R. Sections 164.504(e)(2)(i), 164.501 (e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BUSINESS ASSOCIATE shall not disclose Protected Information except for the purpose of performing BUSINESS ASSOCIATE'S obligations under the Agreement and as permitted under the Agreement. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. If BUSINESS ASSOCIATE discloses Protected Information to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- c. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a)], BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however this prohibition shall not affect

payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement

- d. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as arc necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312 [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)], BUSINESS ASSOCIATE shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** BUSINESS ASSOCIATE shall report to COUNTY *in writing* of any access, use or disclosure of Protected Information not permitted by the Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than two (2) business days after discovery [42 U.S.C Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** BUSINESS ASSOCIATE shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree *in writing* to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)], BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation [45 C.F.R. Sections 164.530(f) and 164.530(e)(1)].
- g. **Access to Protected Information.** This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the COUNTY. BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within ten (10) days of a request by COUNTY to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BUSINESS ASSOCIATE maintains an Electronic Health Record, BUSINESS ASSOCIATE shall provide such information in electronic format to enable COUNTY to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI.** This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the COUNTY. Within ten (10) days of receipt of a request from COUNTY for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE or its agents or subcontractors shall make such Protected Information available to COUNTY for amendment and incorporate any such amendment to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526.
- i. **Accounting Rights.** Within ten (10) days of notice by COUNTY of a request for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its

agents or subcontractors shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including, but not limited to 42 U.S.C. Section 17935(c), as determined by COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of a request forward it to COUNTY in writing. It shall be COUNTY'S responsibility to prepare and deliver any such accounting requested. BUSINESS ASSOCIATE shall not disclose any Protected Information except as set forth in Sections 2.b. of this Business Associate Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528], The provisions of this subparagraph i shall survive the termination of this Agreement.

- j. **Government Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BUSINESS ASSOCIATE shall provide to COUNTY a copy of any Protected Information that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** BUSINESS ASSOCIATE (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Part 164, 45 C.F.R. Section 164.514(d)(3)]. BUSINESS ASSOCIATE understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary of the United States Department of Health and Human Services with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** BUSINESS ASSOCIATE acknowledges that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- m. **Notification of Breach.** During the term of the Agreement, BUSINESS ASSOCIATE shall notify COUNTY without unreasonable delay and in no case later than two (2) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BUSINESS ASSOCIATE becomes aware and/or any actual or suspected use, or disclosure of data in violation of any applicable federal or state laws or regulations. Such notice shall include, but not be limited to, the identification of each individual whose

unsecured protected health information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, or disclosed during such breach. BUSINESS ASSOCIATE shall provide COUNTY with any other available information that the COUNTY is required to include in notification to the individual under 45 C.F.R. Section 164.404(c) at the time of the notification required by this subparagraph m or promptly thereafter as information becomes available. [45 C.F.R. 164.410], BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- n. **Breach Pattern or Practice by COUNTY.** Pursuant to 42 U.S.C. Section 17934(b), if the BUSINESS ASSOCIATE knows of a pattern of activity or practice of the COUNTY that constitutes a material breach or violation of the COUNTY's obligations under the Agreement, the BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of the United States Department of Health and Human Services. BUSINESS ASSOCIATE shall provide written notice to COUNTY of any pattern of activity or practice of the COUNTY that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the COUNTY'S obligations under the Agreement within five (5) days of discovery and shall meet with COUNTY to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination

Material Breach. A breach by BUSINESS ASSOCIATE of any provision of this Business Associate Agreement, as determined by COUNTY, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

Effect of Termination. Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of COUNTY, return or destroy all Protected Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by COUNTY, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI feasible [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If COUNTY elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to COUNTY that such PHI has been destroyed.

4. **Amendment to Comply with Law.** COUNTY and BUSINESS ASSOCIATE acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Business Associate Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that COUNTY must receive satisfactory written assurance from BUSINESS ASSOCIATE that BUSINESS ASSOCIATE will adequately safeguard all Protected

Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the Business Associate Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the event (i) BUSINESS ASSOCIATE does not promptly enter into negotiations to amend this Business Associate Agreement when requested by COUNTY pursuant to this Section or (ii) BUSINESS ASSOCIATE does not enter into an amendment to this Business Associate Agreement providing assurances regarding the safeguarding of PHI that COUNTY, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. **Survival.** The respective rights and obligations of Business Associate shall survive the termination of the Agreement.
6. **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

**FIRST AMENDMENT TO AGREEMENT
BY AND BETWEEN
HUMBOLDT COUNTY
AND
DIAMOND DRUGS, INCORPORATED**

This First Amendment is entered into this 1st day of September, 2013, by and between Humboldt County (hereinafter referred to as "COUNTY") and Diamond Drugs, Incorporated aka Diamond Pharmacy Services, and/or Diamond Medical Supply, Diamond RemedyRepack, SapphireHealth, and InnoVaScript (hereinafter referred to as "CONTRACTOR").

WHEREAS, on August 13, 2013, the parties entered into an Agreement whereby CONTRACTOR agreed to perform certain services; and

WHEREAS, the federal government enacted the Health Information and Technology for Economic and Clinical Health Act (the HITECH Act) and implementing regulations requiring that entities covered by the federal Health Insurance Portability and Accountability Act (HIPAA) must include certain provisions in a "Business Associate Agreement" with their "business associates;" and

WHEREAS, as CONTRACTOR meets the definition of "business associate" as defined in 45 CFR Part 160 Section 160.103, the parties desire to amend their Agreement in order to reflect changes in the law pertaining to Business Associate Agreements.

NOW, THEREFORE, the parties hereby amend said Agreement as follows:

1. Exhibit C, the "COUNTY OF HUMBOLDT HIPAA BUSINESS ASSOCIATE AGREEMENT," is hereby amended to read as follows:

COUNTY OF HUMBOLDT
HIPAA BUSINESS ASSOCIATE AGREEMENT

Recitals:

- A. COUNTY, as a "Covered Entity" (defined below) wishes to disclose certain information to CONTRACTOR, hereafter known as the "BUSINESS ASSOCIATE" (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. COUNTY 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 and Technology for Economic and

Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

- C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires COUNTY to enter into an Agreement 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 contained in this Agreement.

The parties agree as follows:

1. **Definitions**

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on COUNTY’s behalf.
- l. **Security Incident** shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

- m. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- n. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. **Obligations of Business Associate**

- a. **Permitted Uses.** BUSINESS ASSOCIATE shall use Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by COUNTY. However, BUSINESS ASSOCIATE may use Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. [45 C.F.R. Sections 164.504(e)(2), 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BUSINESS ASSOCIATE shall disclose Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. However, BUSINESS ASSOCIATE may disclose Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. If BUSINESS ASSOCIATE discloses Protected Information to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.1. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].
- c. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however this prohibition shall

not affect payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.

- d. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies, procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **Business Associate's Subcontractors and Agents.** BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of COUNTY, agree in writing to the same restrictions and conditions that apply to COUNTY with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Access to Protected Information.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under state law [California Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(e)]. If BUSINESS ASSOCIATE maintains Protected Information in electronic format, BUSINESS ASSOCIATE shall provide such information in electronic format as necessary to enable COUNTY to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.
- g. **Amendment of PHI.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, within ten (10) days of a request by COUNTY for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE and its agents and subcontractors shall make such Protected Information available to COUNTY for amendment and incorporate any such amendment or other documentation to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE must notify COUNTY in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- h. **Accounting of Disclosures.** Within ten (10) days of a request by COUNTY for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents and subcontractors shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of the request forward it to COUNTY in writing.
- i. **Governmental Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BUSINESS ASSOCIATE shall provide COUNTY a copy of any Protected Information and other documents and records that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- j. **Minimum Necessary.** BUSINESS ASSOCIATES, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BUSINESS ASSOCIATE understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- k. **Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- l. **Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify COUNTY within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent

possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed, as well as any other available information that COUNTY is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.1408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

- m. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if BUSINESS ASSOCIATE knows of a pattern or activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement, BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible. BUSINESS ASSOCIATE shall provide written notice to COUNTY of any pattern of activity or practice of a subcontractor or agent that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement within five (5) days of discovery and shall meet with COUNTY to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- n. **Audits, Inspection and Enforcement.** Within ten (10) days of a request by COUNTY, BUSINESS ASSOCIATE and its agents and subcontractors shall allow COUNTY or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether BUSINESS ASSOCIATE has complied with this Agreement or maintains adequate security safeguards. BUSINESS ASSOCIATE shall notify COUNTY within five (5) days of learning that BUSINESS ASSOCIATE has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity.

3. Termination

- a. **Material Breach.** A breach by BUSINESS ASSOCIATE of any provision of this Agreement, as determined by COUNTY, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Effect of Termination.** Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of COUNTY, return or destroy all Protected Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or

destruction is not feasible, as determined by COUNTY, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If COUNTY elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to COUNTY that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

4. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA regulations.

2. Except as set forth above, all other terms and conditions of the Agreement shall remain unchanged.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first herein above written.

HUMBOLDT COUNTY:

By:

Phillip R. Crandall - Designee

Phillip R. Crandall or Designee
DHHS Director
*Signed Pursuant to Authority
Granted by the Board of Supervisors
August 27, 2013*

CONTRACTOR:

Joan Zilner
Name *Joan Zilner*

President
Title

Mark J. Zilner
Name *Mark J. Zilner*

Chief Operating Officer
Title

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND*
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.*

SECOND AMENDMENT TO AGREEMENT

**BY AND BETWEEN
HUMBOLDT COUNTY**

AND

DIAMOND DRUGS, INCORPORATED

FOR FISCAL YEAR 2013-2014

This is an Amendment to that certain Agreement entered into on August 13, 2013, and that First Amendment entered into on September 1, 2013 by and between the County of Humboldt (hereinafter referred to as COUNTY) and Diamond Drugs, Incorporated, aka Diamond Pharmacy Services, and/or Diamond Medical Supply, Diamond, RemedyRepack, SapphireHealth, and InnovaScript (hereinafter referred to as CONTRACTOR) This Second Amendment is entered into this 22nd day of April, 2014.

WHEREAS, the parties desire to amend certain provisions of their Agreement of August 13, 2013.

NOW THEREFORE, the parties mutually agree as follows:

1. Section 8- COMPENSATION is hereby amended to read as follows:

COUNTY will reimburse CONTRACTOR for services pursuant to this Agreement not to exceed the maximum of \$185,000.00 (one hundred eighty five thousand dollars). All costs incurred above the maximum amount will be the responsibility of the CONTRACTOR. It shall be the responsibility of CONTRACTOR to notify COUNTY in writing, at least six weeks prior to the date upon which CONTRACTOR estimates that the maximum amount will be reached. If the maximum amount cited above is reached CONTRACTOR is no longer obligated to perform services unless and until additional funding is approved by COUNTY.

2. Except as modified herein, the Agreement of August 13, 2013, and the First Amendment of September 1, 2013, shall remain in full force and effect.

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In WITNESS WHEREOF, the parties hereto have executed this amendment as of the date and year above written.

COUNTY OF HUMBOLDT

ATTEST:

KATHY HAYES

Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: *[Signature]*

APPROVED AS TO LEGAL FORM:

By *[Signature]*
County Counsel

APPROVED AS TO INSURANCE:

[Signature]
Risk Manager

COUNTY OF HUMBOLDT:

[Signature]
Chair, of the Board of Supervisors

CONTRACTOR:

Diamond Drugs, Incorporated

By: *[Signature]*

Title: *[Signature]*, President

[Print Name and Title of Signer: If Corporate: Chairman, President or Vice President]

By: *[Signature]*

Title: *[Signature]*, Secretary/Treasurer

[Print Name and Title of Signer: If Corporate: Secretary, Assistant Secretary, CFO or Assistant Treasurer]

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.