

CO-APPLICANT AGREEMENT

Between the County of Solano

And

The Solano County Community Healthcare Co-Applicant Board

This Co-Applicant Agreement ("Agreement") shall delineate the relationship between County of Solano ("COUNTY" or "Grantee") and the Solano County Community Healthcare Board ("BOARD"). COUNTY and BOARD shall be collectively referred to as "Co-Applicants" or as the "Parties," as applied to Health Resources and Services Administration ("HRSA") Regulations and Authorities pertaining to the operation of the Health Center in the County of Solano, California designated as part of the Federally Qualified Health Center ("FQHC") program, and

WHEREAS, the COUNTY, through its Health and Social Services Department, ("HSS") provides primary health care services to medically underserved communities and vulnerable populations in the COUNTY; and

WHEREAS, HRSA has established the FQHC program under which the COUNTY may draw federal funding to provide primary health care services to medically underserved communities and vulnerable populations; and

WHEREAS, the COUNTY believes it can better serve these populations through participation in the FQHC program; and

WHEREAS, the COUNTY's participation in the FQHC program requires the COUNTY to comply with the applicable law and the formal policies of HRSA,¹ including the establishment of an independent board that assumes specified authority and oversight responsibility over the Health Center designated as an FQHC; and

WHEREAS, the Parties recognize that consistent with applicable federal laws, regulations, and policies regarding the establishment of a Health Center designated as an FQHC, the co-applicant arrangement is for the BOARD as the patient/community-based governing board to review, adopt or approve the Health Center policies. The co-applicant arrangement shall not allow the COUNTY to override the final approvals and required decision-making authorities of the BOARD, but the COUNTY may be constrained by law in the delegation of certain government functions, and thus the COUNTY is permitted to retain authority over certain fiscal and personnel decisions and policies for the Health Center with an approved co-applicant board arrangement, as set forth herein; and

WHEREAS, the Parties have agreed to enter into a co-applicant arrangement; and

¹ Specifically, Section 330 of the Public Health Services Act (42 U.S.C. §254(b)) and 42 C.F.R. 51c and 42 C.F.R. 56.2d -56.604.

WHEREAS, the Parties wish to set forth in this Agreement, the authorities to be exercised by each Party and the shared responsibilities of the Parties with respect to the Health Center designated as a FQHC; and

NOW, THEREFORE, the COUNTY and the BOARD agree as follows:

1. Role of the BOARD.

- 1.1 Membership. The BOARD's Membership must meet the size, member selection, and composition requirements documented in the Health Center's application for FQHC designation. The details of such are also described in the duly approved Bylaws of the BOARD then in effect, "BOARD Bylaws", which are incorporated by this reference, along with the processes related to elections to officer positions, committee appointments, terms of office, selection, removal, vacancies, and recruitment.
- 1.2 Governance Authorities and Responsibilities. The Parties agree that the BOARD shall carry out its governance responsibilities in accordance with the provisions set out by the applicable law and the formal policies of HRSA, the Health Center Program Requirements and Compliance Manual, the BOARD Bylaws, and the terms of this Agreement, subject to certain limitations.

The BOARD's governance responsibilities include:

- A. Monthly Meetings. The BOARD shall hold monthly meetings where a quorum is present to ensure the BOARD can exercise its required functions;
- B. Project Director (or appropriate Human Resources classification). The BOARD shall approve the selection, evaluate the performance, and/or

approve termination/dismissal of the Project Director from the position of Project Director. Removal of the Project Director from the position of Project Director by the BOARD pursuant to this Agreement shall not in itself constitute a termination of COUNTY employment or impede the Project Director's employment relationship with the COUNTY. COUNTY has the ultimate right to dismiss the Project Director as a COUNTY employee consistent with COUNTY personnel policies, with or without action to dismiss the Project Director by the BOARD, in which case there shall be no recourse for the BOARD concerning that action.² The Project Director reports directly to the BOARD and is responsible for overseeing other key management staff in carrying out the day-to-day activities necessary to fulfill the purpose of the Health Center Program project consistent with this Co-Applicant Agreement and the COUNTY's personnel policies and position classifications.

- C. Key Management Team. The Project Director is responsible for the day-to-day direction and management of the Health Center. Together, the BOARD, Project Director, and other members of the key management team, comprise the leadership of the Health Center and shall work together to ensure a strong organization;
- D. Approval of the Annual Budgets and Audits. The BOARD shall approve the Health Center's annual operating and capital budget prior to submission, as well as approve any changes to the budget made by the COUNTY; and review and accept the annual audit, as well as review and approve any corrective actions as necessary;
- E. Approval of Applications. The BOARD shall approve applications and associated budgets for annual FQHC recertification, annual Section 330 grants (as applicable), and other grant funds regarding the scope of the Health Center;
- F. Approval of Health Center Operations. Subject to COUNTY fiscal and Human Resources policies, the BOARD shall approve the Health Center's hours of operation and health services provided, including decisions to contract for a substantial portion of the Health Center's services;
- G. Financial Management. The BOARD shall monitor the financial status of the Health Center, including ensuring appropriate follow up with HSS regarding the adoption and periodic updates of policies for the financial management of the Health Center (including a system to assure accountability for the Health Center's resources, provision of an annual audit, long-range financial planning, billing and collection policies and accounting procedures).

The BOARD shall receive, review and approve financial reports, including Billing and Accounts Receivable reports;

² See, National Association of Community Health Centers, Public Centers Monograph (Sept. 2019), at p. 27 (Personnel Policies); HRSA Manual Chapter 19 p 1/5; HRSA Manual Ch 11.

- H. Fees and Partial Payment Schedules. The BOARD shall approve the fee schedule for Health Center services, and it shall approve the sliding fee discount program policies and procedures, including the nominal fee and credit and collection policies, subject to the COUNTY's fiscal policies and procedures;
- I. Strategic Planning and Thinking. The BOARD shall approve the mission, vision and values of the Health Center and use these to guide its decision-making and planning. The BOARD shall ensure the community needs assessment informs strategic planning and shall engage in ongoing strategic planning at least once every three years. The BOARD shall approve plans and priorities for the Health Center;
- J. Quality Assurance and Management. The BOARD shall evaluate the performance of the Health Center based on reports from the quality management staff, and ensure appropriate follow up is taken by COUNTY's quality management staff, including audits and state quality management reporting requirements. The Project Director and appropriate staff shall regularly report to the BOARD on matters concerning quality management including any follow-up actions being taken to improve performance. The BOARD shall review, adopt and/or approve policies related to the Health Center's annual Quality Assurance and Management plan;
- K. Client Satisfaction. The BOARD shall provide recommendations on content and implementation of the client survey, and review survey results and follow-up actions, and provide recommendations for improvements, as appropriate; and
- L. Risk Management. The BOARD shall review and approve the Health Center's risk management program and patient grievance policies.

1.3 Policies. Subject to the limitations set forth in the BOARD Bylaws and/or this Agreement, the BOARD shall have authority to ratify and adopt general policies and procedures for the Health Center, including, but not limited to:

- A. Quality Management. Adopting policies for the quality-of-care program including audit procedures;
- B. Fee Schedules. Ratifying and adopting policies for eligibility of services including criteria for fee schedules for services and the sliding fee discount program; and

- C. **Personnel Policies.** Ratifying and adopting the personnel policies and regulations developed and approved by the COUNTY (and as modified, revised or amended by the COUNTY) including, but not limited to, employee selection, performance review, evaluation, discipline and dismissal procedures, employee compensation, wage, salary and benefits, position descriptions, job titles and classifications, reporting structures, employee grievance procedures and processes, and equal employment opportunity practices.
- 1.4 **Limitations on BOARD Authority.** The BOARD may not adopt policy or practice, or take any action, within its scope under this Agreement which is inconsistent with or which alters the scope of any decision or policy set by the COUNTY regarding fiscal or personnel matters or which asserts control, directly or indirectly, over any non-HRSA funded project and/or program.

2. **Role of the COUNTY.**

- 2.1 **Governance Authorities and Responsibilities.** In accordance with federal and state requirements, the Parties recognize that COUNTY, as a public agency, is constrained by law in the delegation of certain functions to other entities. In view of the foregoing, the Parties agree that COUNTY shall retain and exercise freely the following authorities and responsibilities with respect to Health Center:
- A. **Fiscal.** COUNTY shall maintain its authority to set policy on fiscal matters pertaining to Health Center, including, but not limited to, capital and operating borrowing, maintaining internal control policies and procedures, and providing for an annual external independent audit in compliance with the requirements of the Single Audit, to ensure sound financial management procedures and purchasing policies and standards, and appropriating and authorizing funding and staffing for programs;
- B. **Personnel.** Subject to the BOARD's authority as set forth in Section 1.2.B. of this Agreement regarding the selection, evaluation, approval and removal of Health Center Project Director, the Parties agree that COUNTY shall have sole authority over employment matters and development and approval of personnel policies and procedures, including, but not limited to:

- i. Employing or contracting personnel to carry out clinical, managerial, and administrative services related to the HRSA Scope of Project and Health Center, including agreements for the provision of staff who are employees of other agencies and organizations;
- ii. County personnel policies also include establishment of general work schedules and shifts, provided however that assignment of individuals schedules and shifts shall be within day-to-day direction and management of the Project Director; and
- iii. Subject to Section 1.2.B, the day-to-day management of personnel including:
 - a. Employee selection;
 - b. Employee performance review;
 - c. Employee evaluation;
 - d. Employee discipline and dismissal procedures;
 - e. Employee compensation, wage, salary, and benefits;
 - f. Employee position descriptions, job titles, and classifications;
 - g. Employee reporting structures;
 - h. Establishment of general work schedules and shifts, provided however that assignment of individuals to schedules and shifts shall be within day-to-day direction and management of the Project Director;
 - i. Employee grievance procedures and processes;
 - j. Equal opportunity practices;
 - k. Collective bargaining agreements; and
 - l. Labor disputes and other labor and human resources matters.

2.2 Other Responsibilities. Subject to the governance responsibilities exercised by the BOARD, and through the BOARD's policies and

direction, COUNTY shall be responsible for the following:

- A. Applying for and maintaining all licenses, permits, certifications, accreditations, and approvals necessary for the operation of the Health Center;
- B. Receiving, managing and disbursing, as applicable, revenues of the Health Center consistent with the approved budget for the Health Center;
- C. Credentialing and privileging of providers;
- D. Preparing and submitting cost reports, supporting data, and other materials required in connection with reimbursement under Medicare, Medicaid, and other third-party payment contracts and programs;
- E. Preparing monthly financial reports, which shall be submitted to the BOARD, and managing financial matters related to the operation of the Health Center;
- F. Developing and managing internal control systems, in consultation with the BOARD or, in the case of 2.2.F.(v), below, at the direction of the BOARD as appropriate, and as set forth in this Agreement (as applicable), in accordance with Section 330 that provide for:
 - i. Client eligibility determinations, in accordance with the BOARD's approvals and direction in 1.2.H and 1.3.B above;
 - ii. Development, preparation, maintenance and safekeeping of records and books of account relating to the business and financial affairs of the Health Center;
 - iii. Separate maintenance of the Health Center's business and financial records from other records related to the finances of HSS to ensure that funds of the Health Center may be properly allocated;
 - iv. Accounting procedures and financial controls in accordance with generally accepted accounting principles as applied to government agencies;
 - v. Administering, at the BOARD's direction, and subject to the BOARD's approval of the Policies and Fee/Discount Schedules as indicated in 1.2.H and 1.3.B above, a schedule of charges and partial payment schedules (i.e., a sliding fee schedule of discounts) for services provided to certain uninsured and underinsured patients that is consistent with

state and federal law and HRSA policy;

- vi. Billing and collection of payments for services rendered to individuals who are: (1) eligible for federal, state or local public assistance; (2) eligible for payment by private third-party payors and (3) underinsured or uninsured and whose earnings fit the low income criteria established and approved by the BOARD in 1.2.H and 1.3.B above; and
- vii. Compliance with the terms and conditions of the FQHC Look- Alike and/or Grantee designation, as applicable.

G. At the BOARD's direction, assisting with the implementation of ongoing quality improvement programs.

3. Mutual Obligations.

3.1 Budget Development and Approval.

- A. COUNTY shall develop the annual operating and capital budget for the Health Center in consultation with the BOARD. Subject to the requirements for adoption and approval of a public agency budget, the BOARD shall have authority to approve the annual operating and capital budgets of Health Center. In the event the BOARD is unable or unwilling to approve the recommended budget, the

Parties shall engage in a dispute resolution process as defined in the Dispute Resolution and Mediation section of this Agreement;

- B. The Parties shall not materially deviate from the adopted budgets that are approved through the process outlined above except that COUNTY through HSS may modify planned fiscal activities if there is a reduction in available resources (e.g. decreased levels of reimbursement, diminished revenues, or adverse labor events). The COUNTY or HSS shall immediately notify the BOARD of any budgetary change that would materially modify the scope of the FQHC project and seek the necessary approvals of such changes before they are enacted, whenever possible; and
- C. All funds received for services provided and all income otherwise generated by the Health Center, including fees, premiums, third-party reimbursements and other state and local operational funding, and Section 330 grant funds ("Program Income"), as well as all Program Income greater than the amount budgeted ("Excess Program Income"), shall be maintained by the COUNTY. All Program Income and Excess Program Income shall be used to further the goals of the Health Center consistent with the terms of this Agreement.

- 3.2 **Compliance with Laws and Regulations.** The Parties shall have a mutual commitment and responsibility to work together to ensure that the Health Center provides care in compliance with all applicable federal, state, and local laws, policies, and regulations.
- 3.3 **Financial Responsibility.** Each Party agrees not to undertake expenditures in excess of the authorized budget and the available resources and to recognize the COUNTY's responsibility with respect to the fiscal controls and related financial matters described in this Agreement.
- 3.4 **Expenses of Parties.** The expenses of the COUNTY and the BOARD incurred in carrying out its respective obligations for governance and operation of the Health Center pursuant to this Agreement shall be considered expenses incurred in furtherance of the Health Center and thus shall be reimbursed in accordance with applicable FQHC program requirements and the fiscal policies of the COUNTY.
- 3.5 **Record-Keeping and Reporting.** Each Party shall maintain records, reports, supporting documents and all other relevant books, papers, and other documents to enable the Parties to meet all FQHC-related reporting requirements. Records shall be maintained for a period of four (4) years from the date this Agreement expires or is terminated, unless

state and/or federal law requires that records be maintained for a period greater than the four (4) year period specified herein ("the retention period"). If an audit, litigation, or other action involving the records is started before the end of the retention period, the Parties agree to maintain the records until the end of the retention period or until the audit, litigation, or other action is completed, whichever is later. The Parties shall make available to each other, DHHS and the Comptroller General of the United States, the California Department of Health Care Services, the Office of the Comptroller of the State of California or any of their duly authorized representatives, upon appropriate notice, such records, reports, books, documents, and papers as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to each Party's personnel for purposes of interview and discussion related to such documents.

- 3.6 **Confidentiality.** Subject to the COUNTY's obligations, if any, to make public its records in accordance with applicable law, the Parties agree that all information, records, data, and data elements collected and maintained for the administration of this Agreement (in any form, including, but not limited to, written, oral, or contained on video tapes, audio tapes, computer diskettes or other storage devices) shall be treated as confidential and proprietary information. Accordingly, each Party shall take all reasonable precautions to protect such information from unauthorized disclosure; however, nothing contained herein shall be construed to prohibit any authorized federal or other appropriate official from obtaining, reviewing, and auditing any information, record, data, and data element to which they are lawfully entitled. The Parties (and their directors, officers, employees, agents, and contractors) shall maintain the privacy and confidentiality of all protected health information ("PHI") of the patients receiving care provided by the Health Center, in accordance with all applicable state and federal laws and regulations, including the Health Insurance Portability and Accountability Act ("HIPAA").
- 3.7 **Medical Records.** The Parties agree that COUNTY, as the operator of the Health Center, shall retain ownership of all medical records established and maintained relating to diagnosis and treatment of patients served by the Health Center.
- 3.8 **Insurance.**
 - A. The COUNTY shall maintain Professional Liability Insurance, Workers' Compensation Insurance, and General Liability and Property Damage Insurance to cover Health Center activities;

- B. Insurance for the BOARD Chair and BOARD Members shall be required; and
- C. Survival of Section 3.8. This Section 3.8 shall survive the termination of this Agreement without regard to the cause for termination.

3.9 **Ownership of Property Acquired with Grant Funds.** The provisions of 45 C.F.R. § 74.40, et seq., apply to tangible property acquired under this Agreement. The Parties agree that the COUNTY shall be the title holder to all property purchased with grant funds.

3.10 **Copyrightable Material.** If any copyrightable material is developed under this Agreement, COUNTY and the U.S. Department of Health & Human Services ("HHS") shall have a royalty-free, non-exclusive and irrevocable right to reproduce, publish, authorize others or otherwise use such material.

4. **Governing Law.**

4.1 **Applicable Laws, Regulations and Policies.** This Agreement shall be governed and construed in accordance with applicable federal laws, regulations, and policies. In addition, each Party covenants to comply with all applicable laws, ordinances and codes of the State of California and all local governments.

4.2 **New HRSA Directives.** The Project Director shall submit promptly to each Party any directives or policies that are received from HRSA after execution of this Agreement and are pertinent to applicable FQHC program, and the Parties shall comply with such additional directives/policies, as they become applicable.

4.3 **Non-Discrimination.** By signing this Agreement, the BOARD agrees to comply with the COUNTY's Equal Employment Opportunity Non-Discrimination Policy, all related personnel policies, and all related federal and state requirements.

5. **Term.** This Agreement shall remain in effect during the duration of any Section 330 grant award that the COUNTY receives unless terminated at an earlier date in accordance with the terms of Section 6 of this Agreement.

6. **Termination.**

6.1 **Immediate Termination.** This Agreement shall terminate immediately upon the non-renewal or termination of the Section 330 grant.

6.2 **For Cause Termination.** Either party may terminate this Agreement "for cause" if the other Party fails to meet its material obligations under this

Agreement. Such "for cause" termination shall require 90 days prior written notice of intent to terminate during which period the Party that has allegedly failed to meet its material obligations may cure such failure or demonstrate that no such failure has occurred. Any dispute between the Parties regarding whether a breach of a material obligation has occurred, or that such a breach has been satisfactorily cured, will be resolved in accordance with this Agreement.

- 6.3 **Termination by Mutual Agreement.** This Agreement may be terminated upon the mutual approval of the Parties in writing.
- 6.4 **Termination Contingent Upon HRSA Approval.** With the exception of a termination for cause arising from the voluntary or involuntary loss of the Health Center's FQHC designation (or its Section 330 grant), either party may terminate this agreement on 120 days written notice; however, such termination shall not become effective unless and until HRSA issues its written approval of such termination.
7. **Dispute Resolution and Mediation.** The Parties shall first attempt to resolve any dispute or impasse in decision-making arising under or relating to this Agreement by informal discussions between the Project Director and the Chair of the Co-Applicant BOARD. Any dispute or impasse not resolved within a reasonable time following such discussions (not to exceed thirty (30) days) shall be taken to the HSS Director. If the Parties are unable to resolve the dispute, either Party may pursue any remedy available at law.
8. **Notices.** All notices permitted or required by this Agreement shall be deemed given when made in writing and delivered personally or deposited in the United States Mail, first class postage prepaid, Certified and Return Receipt Requested, addressed to the other Party at the addresses set forth below, or such other addresses as the Party may designate in writing:

For Co-Applicant:

Chairperson

County of Solano Community Health Center

Co-Applicant Board

2201 Courage Dr.

Fairfield, CA 94533

For Health Center Operations:

Health Center Project Director

2201 Courage Dr.

Fairfield, CA 94533

For the County of Solano:

Director Health and Social Services

275 Beck Avenue
Solano, CA 94533

9. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective transferees, successors and assigns; provided that neither Party shall have the right to assign, delegate or transfer this Agreement, or its rights and obligations hereunder, without the express prior written consent of the other Party and HRSA.
10. **Severability.** The terms of this Agreement are severable, and the illegality or invalidity of any term or provision shall not affect the validity of any other term or provision, all of which shall remain in full force and effect.
11. **Amendments.** The Parties may agree to amend this Agreement which shall be in writing and signed by the Parties.
12. **Waiver.** No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer or representative of the waiving Party.
13. **Agency.** Except as may be required by the State as a condition of licensure, neither Party is, nor shall be deemed to be, an employee, agent, co-venture or legal representative of the other Party for any purpose. Neither Party shall be entitled to enter into any contracts in the name of, or on behalf of the other Party, nor shall either Party be entitled to pledge the credit of the other Party in any way or hold itself out as having the authority to do so.
14. **Third-Party Beneficiaries.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party, including, without limitation, any creditor of either Party. No third-party shall obtain any right under any provision of this Agreement or shall by reason of any provisions make any claim relating to any debt, liability, obligation or otherwise against any Party to this Agreement.
15. **Force Majeure.** In the event either Party is unable to timely perform its obligations under this agreement due to causes that are beyond its control, including, without limitation, strikes, riots, earthquakes, epidemics, pandemic, war, fire, or any other general catastrophe or act of God, neither Party shall be liable to the other for any loss or damage resulting therefrom.
16. **Co-Applicant BOARD Bylaws.** Duly approved BOARD Bylaws have been enacted by the BOARD and are part of this Agreement articulating an

enduring structure and scope of authority guiding the activities of the BOARD. Those BOARD Bylaws are intended for the regulation of the BOARD and shall be regarded as rules and regulations of the BOARD.

17. Incorporation by Reference of Portions of the County Code. Solano County Code Chapter 2 is hereby incorporated by this reference as though stated in full herein.
18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and no statements, promises or inducements made by a Party or by agents of either Party which are not contained in this Agreement shall be valid or binding.

Execution:

The parties have executed this agreement below by their duly authorized representatives.

County of Solano
Board of Supervisors

County of Solano Community
Health Centers
Co-Applicant Board

By _____

By Mike Brown, vice chair, Michael Brown

Chair Supervisor Mashburn

Chair Brandon Wirth

Date _____

Date 4/17/24