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September 29, 2015

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AMENDMENT NUMBER ONE TO AGREEMENT NUMBER 78039
FOR FIRE SUPPRESSION CAMP SERVICES
BY AND BETWEEN
COUNTY OF LOS ANGELES AND
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATIONS
ALL DISTRICTS
(3 VOTES)**

SUBJECT

This is a joint recommendation with the Los Angeles County Sheriff's Department seeking the approval of Amendment Number One to County Agreement Number 78039/ California Department of Corrections and Rehabilitations Agreement Number 5600003948 with the California Department of Corrections and Rehabilitations for fire suppression camp services.

IT IS RECOMMENDED THAT THE BOARD:

Approve and instruct the Mayor of the Board to execute the attached Amendment Number One to the Agreement with California Department of Corrections and Rehabilitations for fire suppression camp services to (1) reduce the offender per-diem rate from \$46.19 to \$10.00 per day, (2) add an offender per-diem rate of \$81 per day for female inmates in training, and (3) correct a clerical error in Exhibit J.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On September 17, 2013, the Board approved an Agreement with California Department of Corrections and Rehabilitations (CDCR) to allow Los Angeles County (County) inmate participation

in the fire suppression camp services offered by CDCR. Pursuant to the Agreement, CDCR assumes custody of County inmates who are convicted as non-violent, non-serious, non-sexual offenders (N3) and assigns them to one of the five Los Angeles County Inmate Fire Suppression Camps (Fire Camps). The Agreement is funded from the Sheriff's Department (Sheriff) allocation of the Public Safety Realignment Act of 2011 (AB 109) funds. Amendment Number One to the Agreement is necessary to document the reduction in the offender per-diem rate, to add an offender per-diem rate for female inmates in training, and to correct a clerical error in Exhibit J.

On June 11, 2014, CDCR notified the Sheriff that the contracted offender per-diem rate of \$46.19 was being reduced to \$10.00, retroactive to January 1, 2014. The reduction in the offender per-diem rate was due to an agreement between CDCR and the California State Sheriff's Association to reduce the rate to allow the smaller counties with limited resources the opportunity to participate in CDCR's inmate fire suppression camp program. The Agreement between CDCR and the County includes a provision which requires that the County be afforded the lowest rates offered to other California counties.

In addition, an offender per-diem rate was negotiated to allow for the training of female offenders by CDCR. Pursuant to the Agreement, the County is currently required to provide all fire suppression training for inmates prior to placement in a Fire Camp. The County however provides training in fire suppression activities for male inmates only. The training is provided by the Consolidated Fire Protection District (Fire District) of the County pursuant to a memorandum of understanding (MOU) between the Department and the Fire District. Because the County is unable to provide the necessary training for female inmates, CDCR will now be required to do so. All eligible female inmates will be transferred to the California Institution for Women in Chino for their physical fitness training and wildland fire training, prior to placement in the Malibu Fire Camp.

The Sheriff provided the Board with notice of the reduction in offender per-diem rates and the proposed offender per-diem rate for female inmates in training on August 25, 2014. This Amendment Number One now formally documents the rate modifications. The Exhibits A, B and J are attached for reference since they are affected by the changes in Amendment One. Exhibits C - I are not provided in the board letter since they are not affected by the change.

Background

Since the early 1980's, the five local Fire Camps have been jointly managed by CDCR and the Fire District. CDCR supplies the State inmate workforce and onsite security, while the Fire District supervises the inmates working on fire crews. In a similarly managed operation, CDCR supplies State inmate fire crews to the California Department of Forestry and Fire Protection's (CALFire), 39 fire camps located throughout the State.

With the implementation of AB 109, the CALFire system's inmate population gradually declined due to attrition (inmates released, paroled, or sent back to secure CDCR institutions) and the fact that those inmates typically assigned to fire camps are now being sentenced to local county jails. CDCR responded to the eligible inmate population reduction by modifying fire crew size and their fire camp deployment strategy throughout the State, including the five Fire Camps.

The Agreement, approved by the Board on September 17, 2013, transferred custody of up to 528 N3 inmates (380 male and 100 female, plus an additional 10 percent of up to 48 inmates) to replace the State inmates within the five Fire Camps. The N3 inmates are exclusively housed within our Fire Camps, thereby, benefiting the County by:

1. Creating jail capacity specifically for N3s with long-term sentences at a cost that is less than a traditional jail bed;
2. Restoring up to 528 traditional jail beds to the general inmate population;
3. Providing enhanced housing relief since inmates participating in a fire camp program receive two days credit for each day served, resulting in twice as many N3 inmates participating in the fire camp program compared to a traditional jail term;
4. Transferring inmate custodial responsibilities from the Sheriff to the CDCR, including inmate security, welfare, and liability. The CDCR-Fire relationship within the Fire Camps will remain unchanged with CDCR providing security, albeit with a N3 population, and Fire providing supervision and training of the inmate fire crews; and
5. Securing and maintaining the County's full operational fire-fighting capacity with Sheriff supplied N3 fire crews; thereby, eliminating the County's reliance on the CDCR to supply State inmate fire crews.

Since the Agreement was approved by the Board on September 17, 2013, Proposition 47 was passed by the voters on November 4, 2014, that allowed certain low-level, nonviolent felonies the ability to be reduced to misdemeanors on old criminal records and leaving the County jail system earlier than originally sentenced. Therefore, due to the passage of Proposition 47, the County is currently experiencing lower than anticipated number of inmates qualified for placement in the Fire Camps. Currently, there are approximately 150 inmates in the Fire Camps compared to the 528 inmates estimated by the Sheriff when the Agreement was first approved in September 17, 2013.

Implementation of Strategic Plan Goals

This action meets the County's Strategic Plan Goal 1: Operational Effectiveness and Strategic Plan Goal 2: Fiscal Responsibility by creating alternative custody beds to house the additional N3 inmate population outside of the County's traditional jail system.

FISCAL IMPACT/FINANCING

Funding has been designated to the Sheriff from local AB 109 allocation to fund the Agreement with CDCR. With the passage of Proposition 47, the Sheriff is experiencing a lower than anticipated number of qualified inmates for the Fire Camps. Any Fire Camp savings will be used to mitigate the overall deficit that the Sheriff experiences as the result of AB 109 funding. The Sheriff will continue to absorb any deficit as a result of the State's underfunding of the program.

Prior to the proposed Amendment Number One, CDCR established a State-wide fire camp contract daily bed rate of \$46.19, which is equivalent to an annual cost of \$8.9 million for the custody transfer of 528 N3s. In contrast, the Sheriff daily jail bed rate calculated and approved by the Auditor-Controller's Office is \$132.67 and would equate to approximately \$25.6 million in reimbursement for 528 N3s over 365 days.

AGENCY	FORMULA	ANNUAL COST
Sheriff	\$132.67 Daily Bed Rate x 528 N3 x 365 Days	\$25,568,162
CDCR	\$46.19 Daily Bed Rate x 528 N3 x 365 Days	\$8,901,737

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Amendment Number One to the Agreement documents the decrease in the offender per-diem rate from \$46.19 to \$10.00 per day, effective January 1, 2014. Amendment Number One also requires CDCR to provide training in fire suppression activities for all female inmates assigned to the Fire Camp program in exchange for an offender per diem of \$81.00 per day when a female inmate is housed at the California Institute for Women and undergoing training. Amendment Number One also corrects a clerical error in Exhibit J. All other terms and conditions of the Agreement remain the same and unchanged.

The attached Amendment Number One has been approved as to form by County Counsel.

General Agreement Provisions

The Agreement was approved by the Board on September 17, 2013. The term of the Agreement commenced October 23, 2013, and terminates on June 30, 2016. CDCR provides housing, sustenance, inmate programs, and routine medical care in exchange for an offender per-diem rate. The Agreement may be terminated by either party with 60 calendar days advance written notice to the other party. The Agreement provides for mutual indemnification by the parties. Both parties acknowledge that they are self-insured to meet their indemnification obligations under the Agreement.

CDCR provides all services under the Agreement in accordance with all federal, State, and local law, rules, regulations, policies, procedures, and correctional standards, including but not limited to Title 15 and all CDCR policies, procedures, rules, and regulations. The County has the right to audit, inspect, review, and examine the Fire Camp facilities and its operations and programs, including all documents related thereto.

CDCR Staff

CDCR staff shall be Correctional Officers who meet the California Peace Officers Standards and Training staffing requirements, have passed CDCR's background clearances, and have completed the minimum standards for training of correctional officers established by the Board of CDCR and Community Corrections (California pursuant to California Penal Code Section 6035).

Inmates

The Agreement details the inmate eligibility requirements for participation in the CDCR Fire Camp program; whereby, the Sheriff is responsible for conducting criminal history and medical screening of eligible N3s. Upon this initial clearance, the Sheriff provides physical training and, through a separate training MOU with Fire, basic fire suppression training. The Sheriff then transports eligible trained male N3 inmates to a centralized Fire Camp Intake Center at Camp Holton in Sylmar. As amended, the Sheriff will transport eligible trained female N3s directly to the California Institute for Women. CDCR will then assume custody and control of the N3 inmates for the remainder of their sentence. All inmates participate in Fire Camp work programs while assigned to a Fire Camp, including fire suppression work crew assignments, firefighting training, in-camp work assignments, and other miscellaneous work assignments, unless otherwise medically or administratively precluded. N3 inmates are transferred back to the Sheriff for processing prior to release. No inmates are released directly from the Fire Camps.

Worker's Compensation and Medical Care

For all injuries incurred by an inmate housed at a Fire Camp, the County is not responsible for the payment of any medical care or benefits related to an inmate's workers' compensation injuries or claims as required by California law, including but not limited to California Labor Code section 3370. CDCR is solely responsible for all workers' compensation claims and benefits, including the administration of the claims, in the same manner as if the inmate was an inmate of CDCR.

CDCR provides routine medical care to the inmates while housed at the Fire Camps. CDCR notifies the Sheriff of an inmate's increase in medical care needs, including emergent care. In the event that it becomes necessary to remove an inmate from a Fire Camp due to an increase in medical care needs beyond that provided by CDCR (i.e., as routine medical care), CDCR notifies the Sheriff to coordinate the pick-up and transport of the inmate by the Sheriff back to County jail for further medical care.

Fire Camp Credit

Pursuant to California Penal Code section 4019.2, any inmate who is assigned to a county or state correctional institution as an inmate firefighter and who is eligible to earn one day of credit for every one day of incarceration pursuant to California Penal Code Section 4019 shall instead earn two days of credit for every one day served in that assignment. This assists the Sheriff's population management by reducing N3 sentences in half in exchange for their work on a fire crew, which is a direct beneficial service to our communities.

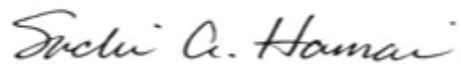
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Fire Camp program has expanded the County's jail system to accommodate the population increase attributable to long-term sentenced N3s. There will be no negative impact on current County services as a result of Amendment Number One to the Agreement.

CONCLUSION

Please return one adopted copy of this board letter and two copies of the fully executed Amendment Number One to the Sheriff's Department, Administrative and Training Division.

Respectfully submitted,



SACHI A. HAMAI
Interim Chief Executive Officer



JIM McDONNELL
Sheriff

SAH:JM:JJ
SW:cc

Enclosures

c: Executive Office, Board of Supervisors
County Counsel
Fire

STATEMENT OF WORK

Unless otherwise defined herein, all capitalized words and terms used herein shall have the meaning set forth in Paragraph 2.0, Definitions, of the Agreement, unless otherwise apparent from the context in which they are used.

A. GENERAL SCOPE OF SERVICES

1. The State will be responsible for providing housing, sustenance, supervision, education, inmate programs, and other services and accommodations for Offenders provided by County at the Fire Camps listed on Exhibit C, List of Fire Camps, of this Agreement. It is understood by the parties that the Fire District-CDCR Agreement sets forth the responsibilities of the State and the Fire District for the operations of the Fire Camps. This Agreement may be expanded by way of written Amendment pursuant to Paragraph 8.1, Amendments, of the Agreement to add additional fire camps located outside of the County which are operated and maintained by Cal Fire.
2. The parties shall make reasonable efforts to maintain Offender populations in the Fire Camps in the amounts set forth on Exhibit C, List of Fire Camps, of this Agreement.
3. The State shall provide and maintain adequate staffing to provide all required services to Offenders when such Offenders are under the custody and control of the State.
4. Once the County transfers custody of an Offender to the State, such Offender will be the sole responsibility of the State and will be under the custody and control of the State, including but not limited to when such Offenders are working on fire crews with the Fire District.
5. The State will ensure the secure custody, care, and safekeeping of all Offenders. The State will be solely responsible for developing and implementing State policies, procedures, rules, and regulations related to the secure custody, care, and safekeeping of Offenders in Fire Camps.
6. The State will provide all services under this Agreement in accordance with all federal, State, and local law, rules, regulations, policies, procedures, and correctional standards, including but not limited to Title 15, and all State policies, procedures, rules, and regulations. The County shall have no liability for the State's failure to comply with such federal, State, and local rules, regulations, policies, procedures, and correctional standards. The County shall have no liability resulting from any State policies, procedures, rules, and regulations which are or may be later deemed to be non-compliant or in violation of any federal, State, and local rules, regulations, policies, procedures, and correctional

standards. The State will provide to the County all State policies, procedures, rules, and regulations within reasonable notification upon request by County. The State will provide reasonable notification to the County in the event of any allegation, investigation, or finding related to the State's non-compliance or violation of any federal, State, and local rules, regulations, policies, procedures, and correctional standards.

7. The State will, at all times, remain in full compliance with the most recent standards for the prevention, detection, response and monitoring of sexual abuse in adult prisons and jails (Prison Rape Elimination Act or "PREA"), as required by the United States Department of Justice.
8. Except during the initial transition of Fire Camps from State inmates to Offenders pursuant to Section D(3) of this SOW, the State will provide housing, sustenance, supervision, education, inmate programs, and other services and accommodations at the Fire Camps solely to Offenders from the County during the term of this Agreement. Except during the initial transition of Fire Camps from State inmates to Offenders pursuant to Section D(3) of this SOW, the State will not house offenders or inmates from any other law enforcement agency or public or private entity, nor utilize the Fire Camps in any way for offenders or inmates from any other law enforcement agency or public or private entity. Notwithstanding, upon the mutual agreement of the parties, offenders from other counties or State inmates may be housed in Fire Camps listed on Exhibit C, List of Fire Camps, either with or without County Offenders, to meet the operational needs of the parties.
9. The County shall have the right to audit, inspect, review, and examine the Fire Camp facilities and its operations and programs, including all documents related thereto. Such rights include but are not limited to site inspections, review of investigative materials related to Offender incidents, and examination of documents related to the care and treatment of Offenders. At the County's sole discretion, such audits, inspections, reviews, and examinations may be conducted by the County and/or its agents at anytime with or without advance notice to the State.

B. SECURITY AND CLASSIFICATION OF OFFENDERS

1. The security and classification level of Offenders eligible for Fire Camps participation are limited to the adult Offenders sentenced to County jail selected by the County and approved by the State.
2. The State criteria for participation are attached to the Agreement as follows:
 - Exhibit D, Fire Camp Offender Criteria – Criminal History

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- Exhibit E, Fire Camp Offender Criteria – Medical/Mental Health/Dental
 - Exhibit F, County Fire Camp Offender Screening and Processing Form
3. Prior to the County's submission of an Offender to the State for Fire Camp placement consideration, the County shall conduct a thorough criminal history screening consistent with Exhibit D, Fire Camp Offender Criteria – Criminal History, of the Agreement to determine eligibility for Fire Camp participation.
 4. Prior to the County's submission of an Offender to the State for Fire Camp placement consideration, the County shall conduct a thorough health care screening, which includes medical, mental health, and dental examinations consistent with Exhibit E, Fire Camp Offender Criteria – Medical/Mental Health/Dental, of the Agreement to determine eligibility for Fire Camp participation.
 5. At the time of submission by the County of an Offender for Fire Camp placement consideration, the County shall provide the Fire Camp State Administrative Office with a completed Exhibit F, County Fire Camp Offender Screening and Processing Form, of the Agreement, along with all required documentation which includes copies of all Offender classification data, including commitment and other judicial orders, and medical, mental health, and dental clearance records.
 6. All Offenders submitted for Fire Camp placement consideration shall be subject to an initial intake review by the State to confirm that Fire Camp placement is appropriate. All Offenders shall also be subject to an annual review conducted by the assigned Fire Camp State Administrative Office to confirm that continued Fire Camp placement is appropriate.

C. OFFENDER FIRE SUPPRESSION TRAINING

1. The County shall provide training in fire suppression activities for male Offenders prior to placement in a Fire Camp. The fire suppression training for male Offenders will be provided by the Fire District pursuant to the separate Memorandum of Agreement between the County and the Fire District. All male Offenders shall be trained, certified as "fire-ready" (unless medically, physically, or administratively precluded), and approved by the Fire District prior to placement in a Fire Camp.
2. The State will provide training in fire suppression activities for female Offenders. The fire suppression training for female Offenders will be provided by the State at the California Institution for Women in Chino, California. All female Offenders shall be trained, certified as "fire-ready" (unless medically, physically, or administratively precluded), and approved by the Fire District prior to placement in a Fire Camp.

3. Offenders may be placed into a Fire Camp as a Non Grade Eligible Offender if 1) the Offender fails the physical fitness or the fire suppression training program, and 2) the County has identified a special work skill that the Offender possesses that will allow the State to place the Offender in a Fire Camp, and 3) placement of the Non Grade Eligible Offender is mutually agreed upon by the County and the Fire Camp State Administrative Office prior to placement in a Fire Camp.

D. DELIVERY OF OFFENDERS TO FIRE CAMPS

1. The County shall be responsible for the transportation and delivery of male Offenders to the Holton Fire Camp and the costs thereof. The State will be responsible for the transportation and delivery of male Offenders to an Offender's assigned Fire Camp. Female Offenders however shall be transported directly by the County to the California Institution for Women (CIW). The State will be responsible for the transportation and delivery of female Offenders from the California Institution for Women to Malibu Fire Camp following their training in fire suppression activities.
2. The County and the State shall work cooperatively to coordinate the delivery and acceptance of Offenders.
3. At the outset of this Agreement, the date of the initial delivery of the Offenders to Fire Camps shall be on a date mutually agreed upon by the County, the Fire District, and the State. The parties agree that Offenders will be phased into the Fire Camps over time and as they are trained by the Fire District. It is understood by the parties that there may be Offenders housed with State inmates during the initial transition period when State inmates are phased out and Offenders are phased in.
4. Funds of an individual Offender held in trust by the County shall be provided via check to the State within seven (7) Business Days of the Offender's delivery to a Fire Camp. Offender funds shall be held and managed pursuant to the State policies, procedures and practices related to Offender trust accounts.

E. RETURN OF OFFENDERS TO COUNTY

1. The County shall be responsible for the transportation, and the costs thereof, for the pick-up and return of an Offender from the Holton or Malibu Fire Camp or other agreed upon location to the County.
2. Upon the demand by the State or the County, Offenders shall be delivered to the custody of the County at a mutually agreed upon time.
3. In the event that it becomes necessary to remove an Offender from a Fire Camp or fire training facility due to an increase in healthcare needs beyond those provided by the State as part of Routine Medical Care, any ongoing or Serious

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Disciplinary reason, an inability to provide a level of custody consistent with the safety and security of the Offender, staff, and/or the Fire Camp, or an Offender's refusal to participate in the Fire Camp program, the State will remove the Offender from the Fire Camp or fire training facility immediately. Following removal, the State will notify the County and coordinate the Offenders return to the County. Except as provided in Section Z(5) of this Statement of Work, each night an Offender is not in a Fire Camp or fire training facility bed but temporarily housed in a State prison or State contracted medical facility, the County shall be charged at the Special Custodial Costs Rate set forth on Exhibit B, Price Schedule, of the Agreement. In the event the Offender requires housing outside of a State facility due to disciplinary action, all associated costs will be passed to the County.

4. The County and the State will coordinate the processing of an Offender prior to the Offender's completion of his or her sentence.
5. All Pre-Release Processing shall be the responsibility of the County. The County shall be responsible for any earned time/good time credit adjustments for which an Offender may be eligible while the Offender is in State custody.
6. When an Offender returns to the County, the State will provide the Offender's funds from the Offender's trust account, in the form of a check payable to the County, within seven (7) Business Days of the Offender's return to the County. Once the release paperwork is complete, it will be forwarded to Trust Accounting in Sacramento. The check will be processed and then forwarded to the County.
7. When an Offender is identified for return to the County, the State will ensure that the Offender's Camp File (OCF) is current with documentation to include but not be limited to program activities (work, education, etc.), classification endorsement and action, and disciplinary history. Offender records maintained at the Fire Camp site shall be transported with the Offender upon return to the County. Files maintained at the Fire Camp State Administrative Office will be mailed to the County within fourteen (14) calendar days of the County Offender's departure from the Fire Camp.
8. In the event that an Offender is summoned for appearance in court, the County shall provide any such documentation received by the County to the Fire Camp State Administrative Office for processing. The County shall assume temporary custody of the Offender and transport the Offender both to and from the assigned Fire Camp for local, state, and federal court appearances.

F. OFFENDER WORK ASSIGNMENTS

1. All Offenders shall participate in Fire Camp work programs while assigned to a Fire Camp, including fire suppression work crew assignments, firefighting

training, in-camp work assignments, and other work assignments, unless otherwise medically or administratively precluded.

2. All Offender work assignments shall be assigned and performed in accordance with Title 15 requirements or as otherwise required by law.
3. For all injuries incurred by an Offender while an Offender is housed at a Fire Camp, the County shall not be responsible for the payment of any medical care or benefits related to an Offender's workers' compensation injuries or claims as required by California law, including but not limited to California Labor Code section 3370. The State will be solely responsible for all workers' compensation claims and benefits, including the administration of the claims, in the same manner as if the Offender was an inmate of the State. The State, at the State's option, may provide stated medical coverage in lieu of workers' compensation benefits, consistent with California law; however, the State remains responsible for any and all workers' compensation benefits, including past, present, and future medical benefits, temporary disability payments, permanent disability payments, home health care costs, and any other benefits or costs arising out of the workers' compensation claim. Should a workers' compensation claim be filed against the County arising out of the performance of this Agreement, the State agrees to defend and indemnify the County for any and all costs, findings, or expenses incurred by the County or that become an obligation of the County. Also, the State will reimburse the County for the costs of any and all medical care provided directly by the County related to an Offender's workers' compensation injury. If emergency medical care related to a workers' compensation injury is provided by an emergency medical provider, then the State will pay the emergency medical provider directly for any and all emergency medical care costs, including emergency transportation by ambulance costs.
4. Wages or compensation payable to Offenders for the performance of work assignments, if any, will be the sole responsibility of the State.
5. Offenders who refuse to participate in Fire Camp work programs shall be returned to the County. The County shall transport the Offender back to the County, at a mutually agreed upon time, following notice to the County from the State of the Offender's refusal to participate in Fire Camp work programs.

G. FIRE CAMP FACILITY OPERATIONS

1. The Fire Camp facilities shall be provided for and maintained in accordance with the requirements set forth in the Fire District–CDCR Agreement

2. Ongoing inspections and tests of the Fire Camp facilities and their building systems shall be performed in accordance with the requirements set forth in the Fire District–CDCR Agreement.
3. The State will maintain an emergency operations manual that identifies a plan of action in the event of an emergency, such as labor strike, natural disaster, or Offender unrest. The emergency operations procedures shall include mutual aid agreements with surrounding law enforcement agencies.

H. OFFENDER PROGRAM OPERATIONS

1. Offender program operations shall be directed by the State, in compliance with all applicable laws, rules, regulations, policies, procedures, and correctional standards, including Title 15, as well as all State policies, procedures, rules, and regulations.
2. The State will develop a policy and procedure manual which describes Fire Camp regulations on procedures for intake, supervision, count, Offender housing, visitation, recreation, food services, medical services, discipline, Offender complaints, Offender release, facility armory, escape, emergency operations, and security-related operations.
3. The State will provide to the County all State policies, procedures, rules, and regulations related to program operations at Fire Camps upon request by the County.

I. OFFENDER PROGRAM SERVICES

1. The Sheriff of Los Angeles County has adopted a philosophy within the jails known as Education Based Incarceration. It focuses on deterring and mitigating crime by investing in Offenders through education and rehabilitation and providing dignity in the jails.
2. The State will provide and maintain inmate programs for Offenders in keeping with the spirit of Education Based Incarceration and in consultation with the County. Offender programming shall be sufficient to meet the minimum standards required by Title 15 and aimed at reducing recidivism, increasing employability, and reunifying families.
3. Offender programs may include, but are not limited to, academic programs, life skills programs, vocational and technical training programs, behavior modification programs, religious and volunteer programs, recreation programs, and visitation and family reunification programs.

4. Offender participation in hobby craft programs and the sale of hobby craft items shall be in accordance with State policies and procedures.
5. The State will provide Offenders reasonable time, accommodations, and space for religious services in keeping with Fire Camp security and other necessary Fire Camp operations and activities. Religious services and counseling may be provided by local volunteer groups and organizations.
6. The State will provide recreational opportunities for Offenders on a daily basis.
7. The State will ensure that all Offenders have court-related access consistent with State policies and procedures. All Offenders requesting access to a law library shall be transported back to the County by the County upon notice from the State.

J. FOOD SERVICES

1. The State will provide sustenance and food services to Offenders at Fire Camps, which meet the minimum dietary and nutritional requirements dictated by Title 15.
2. Food services shall be provided to Offenders in accordance with State policies and procedures.
3. The State will arrange for the purchase of all necessary foods to comply with the minimum dietary and nutritional requirements dictated by Title 15.
4. Offender meals shall be prepared and served three (3) times within each 24 hour period.
5. The State will provide meal planning, kitchen supervision, and meal preparation.
6. Necessary food storage and refrigeration space shall be provided, as well as adequately sized kitchens with required appliances, in accordance with the Fire District-CDCR Agreement.
7. All food shall be prepared and stored in accordance with all State and local codes and regulations.

K. HOUSING AND HOUSEKEEPING SERVICES

1. The State will confine and supervise Offenders in accordance with State policies and procedures. The State will provide security and supervision of Offenders consistent with State policies and procedures, based upon Offender disciplinary behavior, program participation, and other activities.

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2. Dormitory style housing units shall be provided in accordance with the Fire District-CDCR agreement. Dormitory style housing shall provide both day rooms and sleeping space for Offenders at the Fire Camps. Offenders shall be housed in housing units consistent with the Offenders classification and security needs as determined by the State.
3. The State will develop and implement a housekeeping plan to ensure the proper cleanliness of the housing areas.
4. Offenders shall be required to comply with procedures for maintaining their living space.
5. The State will provide all bed linens and towels for use by Offenders. A schedule for the regular issuance of linens and towels shall be developed and maintained by the State.
6. The State will develop, and provide to each Offender, an orientation manual to educate new Offenders on State policies and procedures related to Fire Camps. The manual shall address, at a minimum, housekeeping procedures, sick call/pill call procedures, policies regarding behavior and discipline, and daily routines and practices.

L. OFFENDER CLOTHING

1. The State will provide all Offender clothing for Offenders assigned to Fire Camps in accordance with the Fire District-CDCR Agreement.
2. Offender clothing shall be suitable to the climate and to specific work assignments, as required.
3. The State will be responsible for the laundry, repair, and replacement of Offender State issued clothing during the Offender's incarceration at the Fire Camp to ensure clean clothes on at least a weekly basis. The State will develop a plan, procedure, and a schedule for the exchange of clean Offender clothing.
4. Upon admission and intake of Offenders to the assigned Fire Camp, each Offender shall be issued clothing consistent with current State policies and procedures.
5. Other specialized clothing and safety equipment shall also be issued to Offenders, as necessary, consistent with State policies and procedures.
6. The County shall provide County-issued clothing to the Offender prior to the Offender's permanent return to the County.

M. VISITATION

1. Offenders shall be provided visitation privileges in accordance with Title 15 requirements. The schedule and hours of visitation shall be in accordance with State policies and procedures.
2. The State will provide space, opportunity, furniture, and equipment for visitation as determined by the State.
3. Offender visitors shall be approved per the current State approval process prior to visitation with an Offender.

N. CANTEEN

1. Offenders shall be provided with canteen services in accordance with Title 15 requirements and State policies and procedures.
2. The State reserves the right to disapprove any canteen items for Offenders. The State reserves the right to exclude any canteen item deemed by the State to be a security risk.
3. The State will implement a quarterly package program for Offenders consistent with State policies and procedures. The State reserves the right to exclude any quarterly package item deemed by the State to be a security risk.

O. MAIL

1. Offenders shall be provided regular mail service consistent with Title 15 requirements and State policies and procedures.
2. Indigent Offenders shall be provided with supplies for correspondence for up to the price of twenty (20) one (1) ounce first class letters per month. However, no request for mailing of verified legal mail shall be denied under this provision regardless of postage limit or financial status of the Offender. The State is entitled to recoup postage fees when the Offender has sufficient funds in his Offender trust account.
3. Pursuant to the State policy, all non-confidential Offender mail, incoming or outgoing, is subject to being read by designated State staff.
4. All incoming and outgoing mail and packages shall be searched for contraband.

P. TELEPHONE

1. Offenders shall be provided access to telephone service in accordance with Title 15 requirements and State policy and procedures.

Q. OFFENDER PROPERTY

1. Offenders shall be allowed to possess personal property consistent with State policies and procedures. The allowable property list is attached as Exhibit H, State Allowable Property for Offenders, to the Agreement. Exclusions may be granted based on Fire Camp security requirements.
2. The State will follow State policies and procedures on the disposition of Offender property. The State will compensate Offenders for lost or damaged property due to the negligence of the State in accordance with applicable remedies consistent with State policies and procedures. The County shall not be responsible for such lost or damaged property, and the State will indemnify the County for any and all claims, losses, liabilities, etc., attributable to such lost or damaged property while in State custody.
3. At the time of an Offender's return to the County, only property allowable by the County may be transported back to the County with the Offender. The allowable property list is attached as Exhibit I, County Allowable Property for Offenders, to the Agreement. The State will inform all Offenders of the allowable County property and assist the Offender with its disposition in accordance with State policies and procedures prior to return to the County.

R. OFFENDER COMPLAINTS

1. The State will have and maintain a process for handling Offender complaints and grievances related to conditions of Fire Camp confinement and other State actions and decisions made while the Offender is in State custody. The State will retain final authority on all issues of resolution and appeals related to State decisions and actions.
2. Offender complaints and grievances related to County decisions and actions shall be remedied via the County's complaint process. The County shall retain final authority on all issues of resolution and appeals related to County decisions and actions.

S. STAFFING

1. The County shall not be responsible for the recruitment, hiring, and training of State Fire Camp staff.

2. The State staff shall meet State and California Peace Officer Standards and Training (POST) staffing requirements and background clearances.
3. The State staff shall be Correctional Officers, who have completed the minimum standards for training of correctional officers established by the Board of State and Community Corrections, State of California, pursuant to Penal Code Section 6035.
4. The State staff shall have specific duties relating to the security of the facility and the safety of the community, staff, and Offenders. The State will provide security and supervision for Offenders assigned to the Fire Camp whether in the Fire Camp or elsewhere.
5. The State staff recruitment will follow the guidelines and standards for personnel selection established by the Board of State and Community Corrections, State of California, as part of its standard training for corrections programs.

T. STAFF TRAINING

1. The State will develop and implement a training program for all State custody staff hired for the Fire Camp. The training program will be in accordance with training standards and guidelines developed by the Board of State and Community Corrections, State of California, and promulgated through the Standards and Trainings for Corrections Program.

U. COMMUNICATION OPERATIONS

1. The State shall at all times maintain radio and other communication operations in the Fire Camps which are adequate and appropriate for the administration, security, and safety of the Fire Camp facility, staff, and Offenders.
2. Fire Camp radio operations shall be conducted in accordance with Federal Communications Commission procedures and guidelines.

V. FINANCIAL MANAGEMENT OF FUNDS AND INTERNAL CONTROL

1. The State will establish and maintain sufficient accounting, internal control, financial reporting, and administrative capacity to effectively administer the services required under this Agreement.
2. The State Project Director will be responsible for accounting of all program and facility costs, maintaining all financial records including Offender trust funds, and serving as State's liaison to County fiscal authorities. The State Project Director shall be assisted by the Fire Camp State Administrative Office.

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3. The State Project Director will ensure that accounting and financial records management practices meet generally accepted standards.
4. In accordance with Paragraph 8.33, Record Retention and Inspection/Audit Settlement, of this Agreement, the County may conduct periodic audits of any and all records relating to this Agreement. Such audits may be conducted by any State or federal auditor or agent or an outside accountant or agent employed by the County.
5. When an Offender is transferred to the State from the County, the balance of such Offender's trust account shall also be transferred to the State. If the Offender is transferred back to the County or to another facility, the balance of the Offender's trust account shall also be transferred.
6. Upon notification of a court order for restitution by a County Offender, the State agrees to collect funds from wages and account deposits from the County Offender's trust account. All collected funds will be remitted in a manner that adheres to Title 15, Subchapter 2, Article 1.5, Section 3097 of the California Code of Regulations (15 CCR § 3097).

W. ESCAPES

1. In the event of an escape by an Offender from Fire Camp custody, the State will initiate efforts to apprehend such Offender and notify the State I.D./Warrants Unit and the local law enforcement agencies as required by State statute in the same manner it uses for any other State escapees.
2. The State will immediately, or as soon as reasonably practicable but no later than one (1) hour following the State's knowledge of the escape, notify the Department Fire Camp Operations if the escape occurs during regular business hours. If the escape occurs outside of regular business hours, then notification shall be made to the Watch Commander at the Pitchess Detention Center – South Facility.
3. If the escaped Offender is located within the first twenty-four (24) hours, then the Department Fire Camp Operations shall be notified and will respond to the assigned Fire Camp to accept responsibility of the Offender within twenty-four (24) hours of notification to the Department Fire Camp Operations.
4. If, after twenty-four (24) hours, the Offender has not been located, then the County shall assume and be responsible for the escape pursuit and investigation.
5. In the event of an Offender escape, the State will be responsible for all first reports, which will be filed with the local District Attorney's office.

X. NOTIFICATION OF OFFENDER INCIDENTS, EMERGENCIES, AND DISCIPLINE

1. Offender-related incidents, emergencies, and discipline shall be reported to Department Fire Camp Operations as soon as reasonably practicable after the incident, emergency, or disciplinary matter.
2. All Offenders are subject to State policies, rules, and regulations regarding conduct and behavior. The State will be responsible for adjudicating any disciplinary matters while Offenders are in State custody.

Y. OFFENDER RECORDS AND PROGRESS REPORTS

1. The State will handle and maintain all Offender OCFs and ensure compliance consistent with the State policies and procedures.
2. Offender records regarding Offenders while at the Fire Camp shall be collected and maintained by the State on-site at the Fire Camps in accordance with State record-keeping practices and operating requirements governing confidentiality.
3. OCF's shall not be maintained inside housing units or easily accessible to the Offender population.
4. Upon request, all records, reports, and documents related to Offenders, including but not limited to Offender work/education-vocation records, will be made available to the County for review immediately upon request. When an Offender is transferred from the Fire Camp, the records provided by the County and additional information compiled while the Offender was at the Fire Camp will be updated and transported with the Offender to his/her new location. The record consists of reports, timesheets, staff memos, correspondence, medical records, and other documentation relating to behavior of the Offender.
5. All warrants/holds/detainers received by the County for an Offender shall be forwarded to the Fire Camp State Administrative Office within twenty-four (24) hours of receipt by the County. The County and the State shall work cooperatively to coordinate the transportation of the Offender by the County.
6. The County shall perform all time calculations for Offenders while housed in the Fire Camps and shall provide the State with an initial Offender release date and any subsequent changes to the Offender release date. This information is required to facilitate return of the Offender to the County within forty-eight (48) hours of his/her release.

Z. MEDICAL SERVICES

1. The State will ensure that all Offenders are provided all necessary routine medical care.
2. All medical care shall be provided in compliance with Title 15 requirements and as other required by law.
3. The State will develop and implement State policies and procedures for the provision of all medical care, including medical procedures for the dispensing of medication.
4. In the event that it becomes necessary to remove an Offender from the Fire Camp due to an increase in medical care needs beyond that provided by the State as Routine Medical Care, the State will notify the Department Fire Camp Operations to coordinate the pick-up and transport of the Offender by the County to the County for Non-Routine Medical Care.
5. Emergency, life-threatening Non-Routine Medical Care shall be provided off-site by emergency medical providers within the vicinity of the Fire Camp, and the emergency transport to the emergency medical provider may be provided by ambulance. The State will provide custody supervision of the Offender, and transportation if necessary, at no additional charge to the County while the Offender is at the emergency medical facility for treatment. The State will provide supervision until such time as the Offender is transported back to the Fire Camp or the County assumes supervision of the Offender. The State will provide notice to Department Fire Camp Operations as soon as reasonably practicable but no later than four (4) hours after the occurrence of the Offender's condition that gave rise to the need for hospitalization or emergency treatment. State procedures, including transportation and custody of Offenders, shall be developed and implemented for handling emergency, life-threatening Non-Routine Medical Care for Offenders. All procedures shall be made available to the County within a reasonable amount of time upon request.
6. If, either upon arrival from the County or during incarceration, the State determines that an Offender (1) is not in a sufficient medical condition to be, or remain to be, housed at the Fire Camp, or (2) has serious medical, mental health, or dental needs which cannot be accommodated at the Fire Camp, then said Offender shall be returned to the County. The State will notify the Department Fire Camp Operations to coordinate the pick-up and transport of the Offender by the County.
7. Any Offender suspected of being sexually assaulted shall be transported by the State to the local emergency medical provider for treatment, and a rape kit shall

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be sent to the hospital with the State custody staff, consistent with the State Prison Rape Elimination Act (PREA) protocols.

8. The State will have written policies and procedures to support the management and prevention of infectious diseases.

PRICE SCHEDULE

1. Offender Per-Diem Rate

The Offender Per-Diem Rate shall be an all-inclusive daily rate for all fire suppression services for one (1) Offender, including, but not limited to, housing, sustenance, supervision, education, Offender programs, Routine Medical Care, and other services and accommodations as required by this Agreement and otherwise by law. The Offender Per-Diem Rate does not include the costs of Non-Routine Medical Care or Special Custodial Costs.

OFFENDER PER-DIEM RATE **\$10.00***

2. Offender Per-Diem Rate - Female Offender in Training

The Offender Per-Diem Rate for female Offenders in training shall be an all-inclusive daily rate for all fire suppression training services for one (1) female Offender, including but not limited to, housing, sustenance, supervision, education, Offender programs, Routine Medical Care, and other services and accommodations as required by this Agreement and otherwise by law. The Offender Per-Diem Rate for female Offenders in training does not include the costs of Non-Routine Medical Care or Special Custodial Costs.

OFFENDER PER-DIEM RATE **\$81.00***

3. Special Custodial Costs Rate

The Special Custodial Costs Rate shall be an all-inclusive daily rate for transportation and custody supervision of an Offender to any destination previously approved by the County or when an Offender is temporarily housed at a State prison or State contracted medical facility.

SPECIAL CUSTODIAL COSTS RATE **\$77.00***

*If, at any time during the term of this Agreement, CDCR offers fire suppression camp services to any county at offender per-diem rates and/or a special custodial costs rate lower than the Offender Per-Diem Rates and/or the Special Custodial Costs Rate set forth herein, then (1) CDCR shall extend those lower rates to the County within a reasonable timeframe - not to exceed thirty (30) calendar days - *unless CDCR can demonstrate that extending the lower rates would be cost prohibitive to CDCR*, and (2) *if the lower rates are extended to County*, this Agreement shall be amended in accordance with Paragraph 8.1.3 of this Agreement to decrease the Offender Per-Diem Rates and/or the Special Custodial Costs Rate set forth herein to reflect the lower rates.

AGREEMENT
CONTRACTOR'S OBLIGATIONS AS A
"BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT OF 1996
AND THE HEALTH CARE INFORMATION TECHNOLOGY
FOR ECONOMIC AND CLINICAL HEALTH ACT
(BUSINESS ASSOCIATE AGREEMENT)

Under this Agreement, Contractor ("Business Associate") provides services ("Services") to County ("Covered Entity") and Business Associate receives, has access to or creates Protected Health Information in order to provide those Services.

Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information ("Privacy Regulations") and the Health Insurance Reform: Security Standards ("the Security Regulations") at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (together, the "Privacy and Security Regulations"). The Privacy and Security Regulations require Covered Entity to enter into a contract with Business Associate ("Business Associate Agreement") in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

Further, pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, title XIII and title IV of Division B, ("HITECH Act"), effective February 17, 2010, certain provisions of the HIPAA Privacy and Security Regulations apply to Business Associates in the same manner as they apply to Covered Entity and such provisions must be incorporated into the Business Associate Agreement.

This Business Associate Agreement and the following provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Business Associate in compliance with HIPAA's Privacy and Security Regulations and the HITECH Act, as they now exist or may hereafter be amended.

Therefore, the parties agree as follows:

DEFINITIONS

- 1.1 "Breach" has the same meaning as the term "breach" in 45 C.F.R. § 164.402.
- 1.2 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.

- 1.3 “Electronic Health Record” has the same meaning as the term “electronic health record” in the HITECH Act, 42 U.S.C. section 17921. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- 1.4 “Electronic Media” has the same meaning as the term “electronic media” in 45 C.F.R. § 160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission. The term “Electronic Media” draws no distinction between internal and external data, at rest (that is, in storage) as well as during transmission.
- 1.5 “Electronic Protected Health Information” has the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.6 “Individual” means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.7 “Minimum Necessary” refers to the minimum necessary standard in 45 C.F.R. § 162.502 (b) as in effect or as amended.
- 1.8 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, also referred to as the Privacy Regulations.
- 1.9 “Protected Health Information” has the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or 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; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Health Information.

- 1.10 "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.11 "Security Incident" means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information. However, Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.
- 1.12 "Security Rule" means the Security Standards for the Protection of Electronic Health Information also referred to as the Security Regulations at 45 Code of Federal Regulations (C.F.R.) Part 160 and 164.
- 1.13 "Services" has the same meaning as in the body of this Agreement.
- 1.14 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.
- 1.15 "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.
- 1.16 Terms used, but not otherwise defined in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Regulations and HITECH Act.

OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

(a) shall Use and Disclose Protected Health Information only as necessary to perform the Services, and as provided in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 of this Agreement;

(b) shall Disclose Protected Health Information to Covered Entity upon request;

(c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

(i) Use Protected Health Information; and

(ii) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose or in any manner that would constitute a violation of the Privacy Regulations or the HITECH Act if so Used or Disclosed by Covered Entity.

2.2 Prohibited Uses and Disclosures of Protected Health Information. Business Associate:

(a) shall not Use or Disclose Protected Health Information for fundraising or marketing purposes.

(b) shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates.

(c) shall not directly or indirectly receive payment in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. This prohibition shall not affect payment by Covered Entity to Business Associate. Covered Entity shall not provide such written consent except upon express approval of the departmental privacy officer and only to the extent permitted by law, including HIPAA and the HITECH Act.

2.3 Adequate Safeguards for Protected Health Information. Business Associate:

- (a) shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Business Associate Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the Minimum Necessary in accordance with the Privacy Regulation's minimum necessary standard as in effect or as amended.
- (b) as to Electronic Protected Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information; effective February 17, 2010, said safeguards shall be in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312, and shall comply with the Security Rule's policies and procedure and documentation requirements.

2.4 Reporting Non-Permitted Use or Disclosure and Security Incidents and Breaches of Unsecured Protected Health Information. Business Associate

- (a) shall report to Covered Entity each Use or Disclosure of Protected Health Information that is made by Business Associate, its employees, representatives, Agents, subcontractors, or other parties under Business Associate's control with access to Protected Health Information but which is not specifically permitted by this Business Associate Agreement or otherwise required by law.
- (b) shall report to Covered Entity each Security Incident of which Business Associate becomes aware.
- (c) shall notify Covered Entity of each Breach by Business Associate, its employees, representatives, agents or subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the Business Associate as determined in accordance with the federal common law of agency.

- 2.4.1 Immediate Telephonic Report. Except as provided in Section 2.4.3, notification shall be made immediately upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security

Incident or Breach of Unsecured Protected Health Information by telephone call to (562) 940-3335.

- 2.4.2 Written Report. Except as provided in Section 2.4.3, the initial telephonic notification shall be followed by written notification made without unreasonable delay and in no event later than three (3) Business Days from the date of discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach by the Business Associate to the Chief Privacy Officer at:

Chief Privacy Officer
Kenneth Hahn Hall of Administration
500 West Temple Street
Suite 525
Los Angeles, California 90012
HIPAA@auditor.lacounty.gov
(213) 974-2166

- (a) The notification required by section 2.4 shall include, to the extent possible, 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, Used, or Disclosed; and
- (b) The notification required by section 2.4 shall include, to the extent possible, all information required to provide notification to the Individual under 45 C.F.R. 164.404(c), including:
 - (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (iii) Any other details necessary to conduct an assessment of whether there is a risk of harm to the Individual;
 - (iv) Any steps Business Associate believes that the Individual could take to protect him or herself from potential harm resulting from the breach;

- (v) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against any further Breaches; and
- (vi) The name and contact information for the person most knowledgeable regarding the facts and circumstances of the Breach.

If Business Associate is not able to provide the information specified in section 2.3.2 (a) or (b) at the time of the notification required by section 2.4.2, Business Associate shall provide such information promptly thereafter as such information becomes available.

2.4.3 Request for Delay by Law Enforcement. Business Associate may delay the notification required by section 2.4 if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security. If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay notification, notice, or posting for the time period specified by the official; if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay notification, notice, or posting temporarily and no longer than thirty (30) calendar days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

2.5 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.

2.6 Breach Notification. Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information, provide Breach notification for each and every Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or subcontractors, in a manner that permits Covered Entity to comply with its obligations under Subpart D, Notification in the Case of Breach of Unsecured PHI, of the Privacy and Security Regulations, including:

- (a) Notifying each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of such Breach;

- (b) The notification required by paragraph (a) of this Section 2.6 shall include, to the extent possible:
- (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (iii) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;
 - (iv) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches;
 - (v) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address; and
 - (vi) The notification required by paragraph (a) of this section shall be written in plain language.

Covered Entity, in its sole discretion, may elect to provide the notification required by this Section 2.6, and Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, including costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information.

- 2.7 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.
- 2.8 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected

Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) Business Days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) Business Days after receipt of request from Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

- 2.9 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) Business Days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.
- 2.10 Accounting of Disclosures. Upon Covered Entity’s request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and/or the HITECH Act which requires an Accounting of Disclosures of Protected Health Information maintained in an Electronic Health Record for treatment, payment, and health care operations. However, Business Associate is not required to provide an Accounting of Disclosures that are necessary to perform the Services because such Disclosures are for either payment or health care operations purposes, or both.

Any accounting provided by Business Associate under this Section 2.10 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.10, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) Business Days after receipt of request from Covered Entity, information collected in accordance with this Section 2.10 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

2.11 Indemnification. Business Associate shall indemnify, defend, and hold harmless Covered Entity, including its elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, penalties and fines (including regulatory penalties and/or fines), and expenses (including attorney and expert witness fees), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement; Business Associate's obligations under this provision extend to compliance and/or enforcement actions and/or activities, whether formal or informal, of Secretary of the federal Department of Health and Human Services and/or Office for Civil Rights.

3.0 OBLIGATION OF COVERED ENTITY

3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

4.0 TERM AND TERMINATION

4.1 Term. The term of this Business Associate Agreement shall be the same as the term of this Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.

4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall:

- (a) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
- (b) Immediately terminate this Agreement if a party has breached a material term of this Agreement and cure is not possible; or
- (c) If neither termination nor cure is feasible, report the violation to the Secretary of the federal Department of Health and Human Services.

4.3 Disposition of Protected Health Information Upon Termination or Expiration.

- (a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, Business Associate shall return or

destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

5.0 MISCELLANEOUS

- 5.1 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Business Associate Agreement.
- 5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Business Associate Agreement is contrary to another provision of this Agreement, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of this Agreement.
- 5.4 Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy or Security Regulations means the section as in effect or as amended.
- 5.5 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Regulations.

- 5.6 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Regulations and other privacy laws governing Protected Health Information