



County of Los Angeles  
**CHIEF EXECUTIVE OFFICE**

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Chief Executive Officer

Board of Supervisors  
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First District

MARK RIDLEY-THOMAS  
Second District

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Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

August 14, 2012

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

Dear Supervisors:

**SHERIFF'S DEPARTMENT:  
JAIL WORK PLAN  
APPROVE COMMUNITY CORRECTIONAL FACILITY SERVICES AGREEMENT  
WITH CITY OF TAFT  
(ALL DISTRICTS) (3 VOTES)**

**SUBJECT**

Approval of this action will authorize a Community Correctional Facility Services Agreement with the City of Taft to house County inmates within the Taft Community Correctional Facility, which is a component of the Jail Work Plan that offers housing relief for County jail facilities.

**JOINT RECOMMENDATION WITH THE SHERIFF THAT THE BOARD:**

1. Approve and delegate authority to the Chief Executive Officer to execute the Community Correctional Facility Services Agreement with the City of Taft, commencing upon execution by both parties and terminating on July 31, 2017, to house a minimum of 512 County inmates with long-term sentences within the Taft Community Correctional Facility managed and operated by the City of Taft, with a Maximum Contract Sum for the entire term of the Agreement not to exceed \$75,000,000.

*"To Enrich Lives Through Effective And Caring Service"*

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2. Delegate authority to the Sheriff to execute amendments to the Community Correctional Facility Services Agreement to: 1) modify business processes, operational requirements, or other services, which do not increase the facility per-diem rate and/or the Maximum Annual Contract Sum; and 2) decrease the facility per-diem rate for which the same services are provided.

### **PURPOSE AND JUSTIFICATION OF RECOMMENDED ACTION**

Approval of the recommended action will authorize a Community Correctional Facility Services Agreement (Agreement) with the City of Taft (Taft) to house County inmates within the Taft Community Correctional Facility, which is a component of the Jail Work Plan that offers housing relief for County jail facilities.

#### **Background**

Effective October 1, 2011, the Public Safety Realignment Act of 2011 (AB 109) transferred responsibility for the custody, parole supervision, treatment/support services, and revocation of individuals whose last conviction was a non-serious, non-violent, and non-sex offense (N3) from the State to the counties.

On June 6, 2012, the Chief Executive Officer and the Sheriff presented a Jail Work Plan to review and evaluate inmate management programs and to ensure future capital plans for the County's jail facilities to appropriately accommodate projected inmate classifications, including the addition of inmates sentenced under AB 109. Currently, the Sheriff's custody system has an operating capacity of approximately 21,000 jail beds, which are occupied by a population mix of pre-trial, post-conviction/pre-sentence, and, to a very limited degree, short-term (less than 12 months) sentenced inmates.

With the passage of AB 109, inmates convicted of a N3 will now serve their sentences within the County's jail system instead of being transferred to State prisons. Based on projections using monthly inmate intake and release data, approximately 7,000 N3 inmates will be housed in our jails by Spring 2014. This will represent a significant population shift toward sentenced N3 inmates whose jail term is determined by the courts and without a maximum cap. N3 sentences have ranged from an average 24 months to as lengthy as 42 years. Without custody alternatives, our jail system will soon exceed its capacity.

The Jail Work Plan included exploring various alternative custody models that could potentially offer housing relief for County jail facilities. Upon the conclusion of initial research, it was determined the use of Community Correctional Facilities (CCFs) was a viable option to provide housing for the N3 inmates with the longest sentences. The

Sheriff's Department has since entered into discussions with several cities that operate CCFs.

The Sheriff's Department has completed negotiations with Taft to transfer County N3 inmates to their CCF. The Board's approval of the recommended agreement with Taft will provide housing relief for 512 jail beds at a cost that is significantly less than housing within the County's system.

#### Taft Community Correctional Facility

Taft is located in Kern County, just southwest of Bakersfield. It is approximately 80 miles from the Pitchess Detention Center in Castaic. The Taft facility is a CCF created pursuant to California Penal Code Section 6250 et seq., which originally housed inmates committed to the California Department of Corrections and Rehabilitation (CDCR). The Taft CCF was officially closed in 2011 due to CDCR's termination of its lease for inmate housing.

The Taft CCF is a Type III Adult Detention Facility (operated specifically for convicted and sentenced adults) that provides dormitory style housing for approximately 512 male inmates. Each dorm consists of approximately 64 beds, showers/restrooms, and large open day rooms.

The Taft CCF has agreed to adopt the Sheriff's philosophy on Education Based Incarceration (EBI) and will ensure all programs fit this model. Taft will provide General Education Degree (GED) classes, vocational programs, religious services, and life-skills classes pursuant to the Agreement.

#### Agreement Terms and Conditions

The term of this Agreement commences upon execution by both parties and expires on July 31, 2017. The Agreement may be terminated by either party with a 90 days advance written notice.

Under this Agreement, the Sheriff's Department shall transport N3 inmates who have been convicted and sentenced to long-terms under AB 109 Guidelines to the CCF. Taft will then assume custody and control of the N3 inmates for the full term of their sentence until they are transferred back to the County system. Taft will provide housing, sustenance, education, inmate programs, and other services such as routine medical and dental care. Taft CCF will only house County inmates during the term of the Agreement. Additionally, Taft CCF has agreed to notify the Sheriff's Department of any inmate's increase in medical care needs, including emergent care. Inmates will be

transferred back to the County prior to release. No inmates will be released directly from the Taft CCF.

**IMPLEMENTATION OF STRATEGIC PLAN GOALS**

This action meets the County’s Strategic Plan Goals of Operational Effectiveness (Goal 1) and Fiscal Sustainability (Goal 2) by creating more available beds to house the additional N3 inmate population outside of the County’s jail system.

**FISCAL IMPACT / FINANCING**

During Fiscal Year 2012-2013, the State will be providing counties with funding to support AB 109 programs for the custody, supervision, and rehabilitation of the realigned populations. The Sheriff’s Department will utilize its local allocation of the AB 109 funds to support the Agreement with Taft. Should State funding be reduced, the Sheriff will re-evaluate all AB 109 programs, including this Agreement with Taft. The following factors, among others, will be considered before terminating this Agreement:

- The total jail population and bed space needed at the time of reduction.
- Whether the reduction occurs prior to or after fully funding the Unemployment Insurance Reserve, described below.

The following table provides a jail bed cost comparison between the CCF and County for 512 inmates:

	Taft CCF	County Jail
Start-up daily bed rate	\$61.00 (260 beds)	NA
Daily bed rate	\$60.55 (512 beds)	\$112.84 (512 beds)
Daily operating cost	\$31,000	\$57,800
Annual operating cost	\$11,315,000	\$21,097,000
Five-year operating cost	\$56,575,000	\$105,485,000
Maximum Contract amount	\$75,000,000	

**Start-up Cost & Period**

The County will pay Taft a one-time payment for startup costs in the amount of \$475,800 upon execution of the Agreement. During the first two months of the Agreement or until a mutually agreed upon point in time, Taft will provide an initial 260 beds in exchange for a flat facility per-diem rate of \$15,860 per day (calculated at \$61.00 per inmate).

Full-Capacity Operating Cost

Once the CCF is fully operational, the cost will be adjusted and the County will be charged a flat facility per-diem rate of \$31,000 per day (calculated at \$60.55 per inmate) for all 512 jail beds. Comparatively, the County's Auditor-Controller has set the cost of a County inmate to be housed within the County's jail system at \$112.84 per day. Should the CCF's operational capacity fall below 512 beds, due to maintenance, emergency or other reason, the County will continue to be charged the daily bed rate of \$60.55 for each remaining inmate in the CCF.

In the event of an inmate requiring immediate non-routine, specialized, or emergent medical care, Taft will transport the inmate to the emergency room/hospital and provide security at an hourly rate of \$49.13. The actual costs of the inmate's emergency room/hospital medical services will be billed directly to the Sheriff's Department, as is current protocol with local hospitals, and is a cost separate and apart from this Agreement. These emergency room/hospital costs are anticipated to be comparable to those of inmates requiring hospitalization within the County's system.

The CCF's operating cost and any transportation and security cost provided during a medical emergency/hospitalization, shall not exceed the Maximum Annual Contract Sum of \$15,000,000 and the Maximum Contract Sum shall not exceed \$75,000,000.

Built-in Costs: Unemployment Reserve and State Debt Service Payments

The daily facility per-diem rate of \$31,000 contains two built-in costs that, upon fulfillment, will provide the County with the opportunity to reduce ongoing costs. These built-in costs pertain to unemployment insurance and State debt service payments.

*Unemployment Reserve*

A portion of the County's cost includes a monthly contribution that will be deposited into an Unemployment Insurance Reserve (UI Reserve) for Taft CCF employees. The purpose of this reserve is to fund unemployment insurance payments to CCF employees in the unlikely event the County terminates the Agreement (as occurred unexpectedly with the State last year). The County's contribution to the UI Reserve shall cease after the first 36 months; whereupon, it will be considered fully funded at \$1,002,000 and the facility per-diem rate shall be reduced downward accordingly. Taft shall provide an annual accounting of each year-end balance of the UI Reserve.

Taft may only access the UI Reserve unless the Agreement is terminated and for the sole purpose of making unemployment insurance payments to terminated CCF employees. In the event the County terminates the Agreement:

- Within the first 36 months of the Agreement, then County has an obligation to fully fund the UI reserve.
- After the initial 36 months and Taft enters into a separate agreement with a successor agency for use of the CCF within 24 months following the County's termination; Taft shall refund the County for any unexpended amounts on deposit in the UI Reserve at the time such successor agreement is executed.

In the event Taft is responsible for terminating the Agreement for convenience, then the County will be refunded all contributions within the UI Reserve.

#### State Debt Service Payments

The State of California issued lease revenue bonds in 1997 for the Taft Community Correctional Facility Acquisition Project (CCF Bonds). Under the conditions set forth in the bond issue, Taft is liable for debt service payments. The CCF Bonds will be paid in full in 2017. These debt service payments were built into the inmate housing lease with CDCR. Since CDCR's lease termination in 2011, this payment obligation has been met by the State; however, should the State cease payment, the debt service obligation will fall solely on Taft.

Taft shall make a "good-faith" effort, and take all reasonable actions, to pursue reimbursement from the State of California for damages and liabilities incurred by Taft due to the State's termination of its lease of the Taft CCF.

The facility per-diem rate includes an amount equal to the annual debt service payment due on the CCF Bonds. At the point in time that the CCF Bonds are paid in full or otherwise no longer the responsibility of Taft, then the facility per-diem rate shall be reduced downward accordingly.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

California Penal Code Section 4115.55 authorizes the Board of Supervisors to enter into a contract with other public agencies to provide housing for inmates sentenced to County jail in CCFs created pursuant the California Penal Code section 6250 et seq. As originally chaptered, California Penal Code Section 4115.55 had a sunset date and was

to remain in effect only until January 1, 2015; however, on June 27, 2012, California Penal Code Section 4115.55 was amended, which removed the sunset date.

The Agreement contains the County standard provisions. However, it does contain the following exceptions:

1. Since Taft is located in Kern County, the Safely Surrendered Baby Law provision has been omitted;
2. Taft will comply with its own jury service program;
3. The Agreement provides for mutual indemnification by the parties; and
4. Taft is self-insured and will meet its insurance obligations under the Agreement through its membership in the Central San Joaquin Valley Risk Management Authority, a Joint Powers Authority.

The attached Agreement has been reviewed by Chief Executive Office, Office of Risk Management and approved as to form by County Counsel.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The CCF will expand the County's jail system to accommodate the population increase attributable to sentenced N3s. There will be no negative impact on current County services as a result of this Agreement.

The Honorable Board of Supervisors  
August 14, 2012  
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**CONCLUSION**

Please return one adopted copy of this Board letter to the Chief Executive Office, Public Safety Budget and Capital Projects/Debt Management; and the Sheriff's Department, Administrative Services Division.

Sincerely,



WILLIAM T FUJIOKA  
Chief Executive Officer



LEROY D. BACA  
Sheriff

Attachment

WTF:LDB:RLR  
DJT:DKM:TJ:cvb

c: Executive Office, Board of Supervisors  
County Counsel



**AGREEMENT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

**CITY OF TAFT**

**FOR**

**COMMUNITY CORRECTIONAL FACILITY SERVICES**

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**AGREEMENT  
FOR  
COMMUNITY CORRECTIONAL FACILITY SERVICES**

This Agreement for Community Correctional Facility Services ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the County of Los Angeles ("County") and the City of Taft ("Contractor"), effective upon execution by both parties.

**RECITALS**

WHEREAS, as a result of the Public Safety Realignment of 2011, the County seeks housing, sustenance, supervision, education, inmate programs, and other services and accommodations for certain inmates sentenced to County jail in community correctional facilities created pursuant to California Penal Code section 6250 et seq.; and

WHEREAS, Contractor is a public agency which operates a community correctional facility and provides related services to inmates; and

WHEREAS, the Taft Community Correctional Facility ("CCF") is located at 330 Commerce Way, Taft, California; and

WHEREAS, Contractor previously provided the CCF and related services to selected inmates under the jurisdiction of the Director of the California Department of Corrections; and

WHEREAS, this Agreement is authorized pursuant to California Penal Code section 4115.55.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties hereby agree as follows:

**1.0 APPLICABLE DOCUMENTS**

**1.1 AGREEMENT**

This base document, along with Exhibits A through D, attached hereto, and any fully executed Amendment from time to time hereto or thereto collectively constitute and throughout and hereinafter are referred to as the "Agreement." This Agreement shall constitute the complete and exclusive statement of understanding between County and Contractor and supersedes any and all prior or contemporaneous agreements, written or oral, and all communications between the parties relating to the subject matter of this Agreement.

## 1.2 INTERPRETATION

In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, subtask, deliverable, goods, service, or other Work, or otherwise, such conflict or inconsistency shall be resolved by giving precedence first to this base document, and then to the Exhibits, according to the following priority:

1.2.1 EXHIBIT A - Statement of Work

1.2.2 EXHIBIT B - Price Schedule

1.2.3 EXHIBIT C - Minimum Staffing Plan

1.2.4 EXHIBIT D - Contractor's Obligations as a "Business Associate" Under the Health Insurance Portability AND Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)

## 1.3 CONSTRUCTION

The words "herein", "hereof", and "hereunder" and words of similar import used in this Agreement refer to this Agreement, including all annexes, attachments, Exhibits, and schedules as the context may require. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural. Whenever examples are used in this Agreement with the words "including", "for example", "e.g.", "such as", "etc.", or any derivation of such words, such examples are intended to be illustrative and not limiting. Captions and Paragraph headings used in the Agreement are for reference and convenience only and are not a part of the Agreement and shall not be used in construing the Agreement. References in this Agreement to Federal, State and/or other governmental statutes, codes, rules, regulations, ordinances, guidelines, directives and/or policies, including those copies of which are attached to this Agreement, shall mean and shall be to such statutes, codes, rules, regulations, ordinances, guidelines, directives and/or policies as amended from time to time.

## 2.0 DEFINITIONS

The following capitalized words and terms as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

2.1 "Amendment" has the meaning set forth in Paragraph 8.1, Amendments, of this Agreement.

- 2.2 "Board" means the Los Angeles County Board of Supervisors.
- 2.3 "Business Day" means Monday through Friday, excluding County observed holidays.
- 2.4 "CCF" means the Taft Community Correctional Facility, which is located at 330 Commerce Way, Taft, California 93268.
- 2.5 "Contractor Project Director" has the meaning set forth in Paragraph 4.1, Contractor Project Director, of this Agreement.
- 2.6 "Contractor Project Manager" has the meaning set forth in Paragraph 4.2, Contractor Project Manager, of this Agreement.
- 2.7 "Contractor" has the meaning set forth in the preamble.
- 2.8 "Correctional Officer" means any individual employed by Contractor pursuant to California Penal Code section 830.55 and who was hired and has received training in accordance with California Penal Code section 832 and/or 6035, as applicable.
- 2.9 "County" has the meaning set forth in the preamble.
- 2.10 "County Project Director" has the meaning set forth in Paragraph 3.1, County Project Director, of this Agreement.
- 2.11 "County Project Manager" has the meaning set forth in Paragraph 3.2, County Project Manager, of this Agreement.
- 2.12 "CSA" means the Corrections Standards Authority of the State of California.
- 2.13 "Department" means the Los Angeles County Sheriff's Department.
- 2.14 "Fiscal Year" means the twelve (12) month period beginning July 1 and ending the following June 30.
- 2.15 "Maximum Annual Contract Sum" means the maximum amount payable by the County to the Contractor in any contract year for providing the required Work under this Agreement, inclusive of all applicable salaries, benefits, administrative costs, overhead, and taxes, and more specifically means the not-to-exceed amount set forth in Paragraph 5.0, Contract Sum and Rates, of this Agreement. Notwithstanding, the Maximum Annual Contract Sum does not include Non-Routine Medical Care Costs which are payable by County directly to the medical or dental provider.

- 2.16 "Maximum Contract Sum" means the maximum amount payable by the County to the Contractor for providing the required Work during the term of this Agreement, inclusive of all applicable salaries, benefits, administrative costs, overhead, and taxes, and more specifically means the not-to-exceed amount set forth in Paragraph 5.0, Contract Sum and Rates, of this Agreement. Notwithstanding, the Maximum Annual Contract Sum does not include Non-Routine Medical Care Costs, which are payable by County directly to the medical or dental provider.
- 2.17 "Non-Routine Medical Care" means treatment for any medical or dental condition which requires hospitalization, emergency response, or specialization that cannot be performed or provided by the CCF physician or licensed nurses on-site and which is not otherwise provided by Contractor's off-site medical and dental providers pursuant to the medical and dental plan agreements between Contractor and its contracted medical and dental provider(s). Examples of Non-Routine Medical Care include surgery, neurological care, trauma, cardiac care, burns, rape/sodomy cases, cancer treatment, "active" HIV/AIDS, and any care that requires emergency or ambulance services.
- 2.18 "Non-Routine Medical Care Costs" means actual expenses incurred in the provision of Non-Routine Medical Care provided to inmates by medical and dental providers located within the vicinity of CCF, as well as emergency transportation by ambulance to such medical and dental providers. Such costs will be paid directly by the County to the local medical and dental providers in accordance with Paragraph 5.4, Payments for Non-Routine Medical Care, of this Agreement.
- 2.19 "Non-Routine Medical Custodial Costs" means expenses incurred by Contractor in the provision of security and transportation of inmates approved by County for Non-Routine Medical Care, including salaries and overtime salaries/benefits for Contractor custodial staff when an inmate is hospitalized, as further set forth in Paragraph 5.4, Payments for Non-Routine Medical Care, of this Agreement.
- 2.20 "Routine Medical Care" means treatment for any medical and dental condition which is provided to inmates by contracted physicians, dentists, and nurses to inmates either on-site at the CCF or off-site pursuant to the medical and dental plan agreements between Contractor and its contracted medical and dental provider(s). Routine Medical Care includes treatment at the local "Urgent Care" facility operated by Contractor's contracted medical provider, as well as transportation and custodial staff salaries/overtime salaries and benefits associated with treatment at the "Urgent Care" facility.
- 2.21 "Sheriff" means the Sheriff of the County of Los Angeles.

- 2.22 "Special Custodial Costs" means expenses incurred by Contractor in the provision of transportation of inmates and salaries and overtime salaries and benefits incurred by Contractor when an inmate is transported by Contractor to a destination previously approved by the County.
- 2.23 "Statement of Work" or "SOW" means the Statement of Work, attached as Exhibit A, Statement of Work, to this Agreement, as the same may be amended by any fully executed Amendment.
- 2.24 "STC" means the State of California, Corrections Standards Authority, Standards and Training for Corrections Program.
- 2.25 "Title 15" means Title 15 of the California Code of Regulations.
- 2.26 "Title 24" means Title 24 of the California Code of Regulations.
- 2.27 "Type III Adult Detention Facility" means a local detention facility used for the detention of convicted and sentenced adults.
- 2.28 "Work" means any and all tasks, subtasks, deliverables, goods, and other services performed by or on behalf of Contractor including the work required pursuant to this Agreement, including Exhibit A, Statement of Work, and all other Exhibits to this Agreement, and any and all fully executed Amendments hereto.

### **3.0 WORK**

- 3.1 Pursuant to the provisions of this Agreement, the Contractor shall fully perform, complete, and deliver on time, all tasks, deliverables, services and other work as set forth herein, including Exhibit A, Statement of Work, of this Agreement.
- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Agreement, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

### **4.0 TERM OF AGREEMENT**

- 4.1 The term of this Agreement shall commence upon execution by both parties and shall terminate July 31, 2017, unless sooner terminated or extended, in whole or in part, as provided in this Agreement.
- 4.2 The term of this Agreement may be extended upon the mutual consent of the parties. All such extensions shall be in the form of a written Amendment, executed by the County Board of Supervisors and Contractor, in accordance with Paragraph 8.1.1 of this Agreement.

- 4.3 The parties shall meet and confer at least one hundred and eighty (180) calendar days prior to the expiration of this Agreement to discuss the possible renewal or extension of this Agreement. Absent the mutual consent of the parties and a written Amendment extending the term of this Agreement in accordance with Paragraph 4.2 above, this Agreement shall expire at the conclusion of the then-existing term.
- 4.4 This Agreement shall terminate immediately if this Agreement is deemed to be unlawful or in the event that the authority for this Agreement pursuant to California Penal Code section 4115.55 is revoked by legislative action.
- 4.5 The County maintains databases that track/monitor contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.
- 4.6 In the event of termination by either party or upon expiration of this Agreement, the Contractor and the County shall fully cooperate in the transition and relocation of inmates to a new correctional facility.

## **5.0 CONTRACT SUM AND RATES**

### **5.1 Maximum Annual Contract Sum and Maximum Contract Sum**

- 5.1.1 The Maximum Annual Contract Sum, exclusive of Non-Routine Medical Care Costs, shall not exceed \$15,000,000.
- 5.1.2 The Maximum Contract Sum, exclusive of Non-Routine Medical Care Costs, for the term of this Agreement shall not exceed \$75,000,000.

### **5.2 Facility Per-Diem Rate**

- 5.2.1 The Contractor shall be paid for all services performed based upon the facility per-diem rate set forth in Exhibit B, Price Schedule, of this Agreement. The facility per-diem rate shall cover all inmate housing, sustenance, supervision, education, programs, Routine Medical Care, and other services and accommodations as required by this Agreement and otherwise by law. In exchange for the facility per-diem rate, the Contractor shall provide a minimum of 512 inmate beds per day. The facility per-diem rate does not include Non-Routine Medical Care Costs, Non-Routine Medical Custodial Costs, or Special Custodial Costs.
  - 5.2.1.1 If, due to maintenance, emergency repairs, or any other occurrence, the bed space made available by

Contractor falls below the minimum 512 beds, then an inmate per-diem rate shall be calculated as follows:  
\$31,000 daily facility per diem rate / 512 beds =  
\$60.55 per day per available bed.

- 5.2.2 The County shall begin to incur daily facility per-diem charges pursuant to this Paragraph 5.2, Facility Per-Diem Rate, upon the delivery of the first inmate to the CCF. If this Agreement is executed and effective prior to the County's transportation and delivery of inmates to the CCF, the County shall incur no charges during that time period and prior to the inmate's arrival at the CCF.
- 5.2.3 The facility per-diem rate set forth on Exhibit B, Price Schedule, of this Agreement shall be firm and fixed for the first two (2) years of the Agreement. Thereafter, the County and the Contractor agree to discuss a possible rate increase or decrease in the facility per-diem rate. Any modification which increases the facility per-diem rate shall be in the form of a written Amendment, executed by the County Board of Supervisors and the Contractor, in accordance with Paragraph 8.1.1 of this Agreement.
- 5.2.4 Notwithstanding other provisions in Paragraph 5.2, Facility Per-Diem Rate, of this Agreement, during the first two months of the Agreement or until a mutually agreed upon point in time, the Contractor shall be paid a facility per-diem rate of \$15,860 in exchange for 260 inmate beds per day. This operation of the CCF at partial capacity allows the parties a reasonable period of time to establish workable policies, procedures, and practices for the effective administration of the CCF. At the agreed upon point in time when the facility is fully operational with full CCF staffing and the ability to provide 512 inmate beds, then such facility per diem shall increase to the regular facility per-diem rate contemplated in Paragraph 5.2.1 above and set forth on Exhibit B, Price Schedule, of this Agreement.

### **5.3 Unemployment Insurance Reserve**

- 5.3.1 The facility per diem rate and the inmate per diem rate referenced in Paragraph 5.2, Facility Per Diem Rate, above include contributions to an Unemployment Insurance Reserve ("UI Reserve") for the Contractor's employees working at the CCF. The UI Reserve is established for the sole and exclusive purpose of the Contractor making unemployment insurance payments to CCF employees who are terminated as the direct result of termination of this Agreement.

- 5.3.2 The County shall make contributions to the UI Reserve only for the first thirty-six (36) months of this Agreement. The UI Reserve contributions equal \$334,000 per year or \$1,002,000 for the first thirty (36) months of this Agreement. Total contributions to the UI Reserve shall not exceed \$1,002,000, whereupon it shall be considered fully funded.
- 5.3.3 After thirty-six (36) months of UI Reserve contributions have been made by the County, then the County shall no longer be liable to the Contractor for any UI Reserve contribution and the facility per diem rate and inmate per diem rate shall be reduced accordingly by way of written Amendment to this Agreement in accordance with Paragraph 8.1.4 below.
- 5.3.4 If the County should terminate this Agreement pursuant to Paragraph 8.37, Termination for Convenience, of this Agreement, within the first thirty-six (36) months of the term of this Agreement, then the County shall be required to fully fund the UI Reserve within ninety (90) calendar days after the notice of termination is sent or upon the date of actual termination of this Agreement, whichever is later. The Contractor shall only then be authorized to access funds from the UI Reserve to make unemployment insurance payments to affected CCF employees.
- 5.3.5 If the Contractor should terminate this Agreement pursuant to Paragraph 8.37, Termination for Convenience, of this Agreement, then the County shall not pay, and the Contractor shall not be entitled to, any contributions to the UI Reserve. All contributions shall be refunded to the County within thirty (30) calendar days of the last date that the Contractor provided service to the County.
- 5.3.6 If this Agreement terminates early pursuant to Paragraph 4.4 of this Agreement, then the County shall not pay, and the Contractor shall not be entitled to, any contributions to the UI Reserve. All contributions made to the UI Reserve shall be refunded to the County within thirty (30) calendar days of the last date the Contractor provided service to the County.
- 5.3.7 If the County terminates this Agreement pursuant to Paragraph 8.36, Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program, Paragraph 8.38, Termination for Default, Paragraph 8.39, Termination for Improper Consideration, Paragraph 8.40, Termination for Insolvency, Paragraph 8.41, Termination for Non-Adherence of County Lobbyist Ordinance, or Paragraph 8.46, Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program, of this Agreement, then the County shall

not pay, and the Contractor shall not be entitled to, any contributions to the UI Reserve. All contributions made to the UI Reserve shall be refunded to the County within thirty (30) calendar days of the last date the Contractor provided service to the County.

- 5.3.8 The Contractor shall provide the County with a written accounting of the contributions made to the UI Reserve and the amount on deposit in the UI Reserve as of June 30 of each year within ninety (90) calendar days following the end of each fiscal year.
- 5.3.9 In the event that the County exercises its option to terminate this Agreement after the first thirty-six (36) months of the Agreement and the Contractor enters into a separate contract with a successor agency for use of the CCF within twenty-four (24) months following the County's termination of this Agreement, then the Contractor shall refund the County for any unexpended amounts on deposit in the UI Reserve at the time such successor contract is executed. Should no successor contract be executed after twenty-four (24) months, then the County shall release all interest in the remaining UI Reserve balance.

#### **5.4 State Debt Service Payments**

- 5.4.1 The facility per diem rate and the inmate per bed rate referenced in Paragraph 5.2, Facility Per Diem Rate, above includes full contribution for the annual debt service payment due on the 1997 Taft Community Correctional Facility Acquisition Project bond issue ("CCF Bonds").
- 5.4.2 The Contractor shall make a "good-faith" effort, and take all reasonable actions, to pursue reimbursement from the State of California for damages and liabilities incurred by the Contractor due to the State's termination of its lease of the CCF. Such liabilities include debt service payments due on the CCF Bonds.
- 5.4.3 In the event that the State makes the debt service payments due on the CCF Bonds, the Contractor shall credit the County for said payments made to the Contractor for such debt service payments, dollar for dollar, in the subsequent monthly invoice(s) to the County.
- 5.4.4 At the point in time that the CCF Bonds are paid in full or it is determined that such debt service payment liability belongs to the State, the County shall no longer be liable to the Contractor for any debt service payment contribution, and the facility per diem rate and inmate per diem rate shall be reduced accordingly by way of written Amendment to this Agreement in accordance with Paragraph 8.1.4 below.

## **5.5 One-Time Payment of Start-Up Costs**

Upon execution of this Agreement by both parties, the County shall pay to the Contractor a one-time payment for Contractor start-up costs in a sum of \$475,800. Contractor shall prepare and submit an invoice to the County Project Manager prior to payment by the County.

## **5.6 Payments for Non-Routine Medical Care**

5.6.1 The costs associated with Non-Routine Medical Care shall be the responsibility of the County as set forth herein.

5.6.2 The County shall pay the Non-Routine Medical Care Costs, which include the actual medical expenses incurred in the provision of Non-Routine Medical Care to inmates by medical and dental providers located within the vicinity of CCF, as well as emergency transportation by ambulance to such medical and dental providers. Such costs shall be paid directly by the County to the local medical and dental providers. The Contractor shall assist, as necessary, in the facilitation of billing and payments between the County and the local medical and dental providers.

5.6.3 The County shall reimburse the Contractor for Non-Routine Medical Custodial Costs, which include transportation and salaries/overtime salaries and benefits for Contractor custodial staff when an inmate requires hospitalization or other off-site Non-Routine Medical Care. The Contractor shall be reimbursed a flat hourly rate, inclusive of transportation and custodial staff salary/benefits, not to exceed the amount set forth on Exhibit B, Price Schedule, of this Agreement.

5.6.4 Prior to the Contractor seeking non-emergency, non-life-threatening Non-Routine Medical Care for an inmate, the Contractor must seek pre-approval for such Non-Routine Medical Care from the Sheriff's Department Medical Services Bureau Command Post at 213-893-5544 or such expenses shall not be reimbursable or paid by the County; otherwise, the County shall not reimburse the Contractor for any Non-Routine Medical Custodial Costs and the Contractor shall be solely responsible for any billings resulting from the Non-Routine Medical Care provided to the inmate.

5.6.5 In emergency, life-threatening situations, Non-Routine Medical Care shall hereby be deemed pre-approved by the County. However, the Contractor shall provide notice to County as soon as reasonably practicable, but not later than four (4) hours after the occurrence of the inmate's condition which gave rise to the need for hospitalization or emergency care.

**5.7 Special Custodial Costs**

5.7.1 The County shall reimburse the Contractor for Special Custodial Costs, which include transportation and salaries/overtime salaries and benefits for Contractor custodial staff when the Contractor transports an inmate to a destination previously approved by the County. The Contractor shall be reimbursed a flat hourly rate, inclusive of transportation and custodial staff salary/benefits, not to exceed the amount set forth on Exhibit B, Price Schedule, of this Agreement.

5.7.2 The costs of inmate transportation payable under this Paragraph 5.7 must be pre-approved by the County or such expenses shall not be reimbursable by the County.

5.8 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval.

5.9 The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent (75%) of the Maximum Contract Sum under this Agreement. Upon occurrence of this event, the Contractor shall send written notification to the County Project Director and County Project Director at the addresses set forth in Paragraph 6.0, Administration of Agreement-County, of this Agreement.

5.10 The Contractor shall have no claim against the County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Agreement. Should the Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to the County. Payment by the County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Agreement.

## 5.11 Invoices and Payments

- 5.11.1 All Work performed under this Agreement shall be payable in arrears on a monthly basis in accordance with the terms and conditions of this Agreement, including this Paragraph 5.0, Contract Sum and Rates.
- 5.11.2 The Contractor shall prepare and submit invoices to the County for Work provided under this Agreement. The Contractor's invoices shall be priced at the inmate per-diem rate set forth in Paragraph 5.2, Facility Per-Diem Rate, of this Agreement and shall set forth the total amount claimed. All invoices shall include a roster of inmates, which sets forth the inmate's name, booking number, the number of days for which payment is sought, and the facility per diem rate or inmate per diem rate, as applicable.
- 5.11.3 Monthly invoices shall also include separate sections for reimbursement claims for Non-Routine Medical Custodial Costs and Special Custodial Costs, if any. The claim shall reflect the hourly rate set forth on Exhibit B, Price Schedule, of this Agreement and the number of custodial staff and hours for service. The Contractor shall attach documentation sufficient to justify reimbursement of such costs. The documentation required shall be mutually agreed upon by the County and the Contractor.
- 5.11.4 The Contractor shall submit the monthly invoices to the County by the 15<sup>th</sup> calendar day of the month following the month of service.
- 5.11.5 All invoices under this Agreement shall be submitted in two (2) copies to the following address:
- Los Angeles County Sheriff's Department  
Fiscal Administration  
Attn: Accounts Payable-3<sup>rd</sup> Floor  
4700 Ramona Boulevard  
Monterey Park, California 91754
- 5.11.6 All invoices submitted by the Contractor for payment must have the written approval of the County's Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld

## **6.0 ADMINISTRATION OF AGREEMENT - COUNTY**

### **6.1 COUNTY PROJECT DIRECTOR**

6.1.1 The County Project Director shall be the following person:

Chief Alexander Yim  
450 Bauchet Street  
Los Angeles, California 90012  
Phone: 213-893-5017  
Fax: 323-415-3983  
Email: ARYim@lasd.org

6.1.2 The County Project Director shall be responsible for ensuring that the objectives of this Agreement are met and providing direction to the Contractor in the areas relating to County policy, information requirements, and procedural requirements.

6.1.3 The County Project Director is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

6.1.4 The County shall notify the Contractor in writing of any change in the name or address of the County Project Director listed above.

### **6.2 COUNTY PROJECT MANAGER**

6.2.1 The County Project Manager shall be the following person:

Commander David Fender  
450 Bauchet Street  
Los Angeles, California 90012  
Phone: 213-893-5888  
Fax: 323-415-3311  
Email: DLFender@lasd.org

6.2.2 The County Project Manager shall be responsible for meeting with the Contractor Project Manager on a regular basis and inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of the Contractor.

6.2.3 The County Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

6.2.4 The County shall notify the Contractor in writing of any change in the name or address of the County Project Manager listed above.

6.2.5 The County Project Manager, at his discretion, may designate in writing a person or person(s) which shall serve as the daily direct County contact for various issues relating to this Agreement.

## **7.0 ADMINISTRATION OF AGREEMENT - CONTRACTOR**

### **7.1 CONTRACTOR PROJECT DIRECTOR**

7.1.1 The Contractor Project Director shall be the following person:

Ed Whiting  
320 Commerce Way  
Taft, California 93268  
Phone: 661-763-3101  
Fax: 661-763-4726  
Email: whitingtpd@bak.rr.com

7.1.2 The Contractor Project Director shall be responsible for Contractor's performance of all of Work and ensuring Contractor's compliance with this Agreement.

7.1.3 During the term of this Agreement, the Contractor Project Director shall be available to meet and confer with the County Project Director at least weekly, in person or by phone, to review project progress and discuss project coordination.

7.1.4 The Contractor shall notify the County in writing of any change in the name or address of the Contractor Project Director listed above.

### **7.2 CONTRACTOR PROJECT MANAGER**

7.2.1 The Contractor Project Manager shall be the following person:

Laura Dillingham  
320 Commerce Way  
Taft, California 93268  
Phone: 661-763-3101  
Fax: 661-763-4726  
Email: Dillingham-ccf@bak.rr.com

7.2.2 The Contractor Project Manager shall be responsible for Contractor's day-to-day activities as related to this Agreement.

- 7.2.3 During the term of the Agreement, the Contractor Project Manager shall be available to confer with County by telephone, as necessary.
- 7.2.4 The Contractor shall notify the County in writing of any change in the name or address of Contractor Project Manager listed above.
- 7.2.5 The Contractor Project Manager shall provide the County Project Manager with emergency contact information in the event of an emergency.

## **8.0 STANDARD TERMS AND CONDITIONS**

### **8.1 AMENDMENTS**

- 8.1.1 For any change which materially affects the scope of Work, term, Price Schedule, Maximum Contract Sum, payments, or any term or condition included under this Agreement, an Amendment to the Agreement shall be executed by the Contractor and the Board.
- 8.1.2 For any change which does not materially affect the scope of Work, period of performance, amount of payments, or any other term or condition included under this Agreement, an Amendment to the Agreement shall be executed by the Contractor and the Sheriff.
- 8.1.3 The County's Board or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add and/or change such provisions as required by the County's Board or Chief Executive Officer. To implement such changes, an Amendment to the Agreement shall be executed by the Contractor and the Sheriff.
- 8.1.4 Notwithstanding Paragraph 8.1.1 of the Agreement, for (1) any change to the business processes, operational requirements, or other services set forth in Exhibit A, Statement of Work, or elsewhere in this Agreement, which do not increase the facility per-diem rate and/or the Maximum Annual Contract Sum, and (2) any decrease in the facility per-diem rate for which the same services are provided, an Amendment shall be executed by the Contractor and the Sheriff.

### **8.2 ASSIGNMENT AND DELEGATION**

- 8.2.1 The Contractor shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be

null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.

- 8.2.2 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

### **8.3 AUTHORIZATION WARRANTY**

The Contractor represents and warrants that the person executing this Agreement for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.

### **8.4 BACKGROUND AND SECURITY INVESTIGATIONS**

- 8.4.1 Each of Contractor's staff performing services under this Agreement, unless currently employed by Contractor in a sworn peace officer status, shall undergo and pass a background investigation to the satisfaction of the County as a condition of beginning and continuing to perform services under this Agreement. Such background investigation may include, but shall not be limited to, criminal conviction information obtained through fingerprints submitted to the California Department of Justice. The fees associated with the background investigation shall be at the sole expense of the Contractor, regardless if the member of the Contractor's staff passes or fails the background investigation.

- 8.4.2 If a member of the Contractor's proposed staff does not pass the background investigation, the proposed staff member may not be hired by Contractor to perform services under this Agreement. If the County becomes aware of any derogatory information about any Contractor staff member, the derogatory information will be passed on to the Contractor's Internal Affairs officer for an

investigation. The results of the investigation shall be made available to the County at the conclusion of the investigation.

- 8.4.3 Disqualification of any member of the Contractor's staff pursuant to this Paragraph 8.4 shall not relieve the Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Agreement.
- 8.4.4 The Contractor shall provide the County with written notice regarding any subcontractor or volunteer who will be working in the CCF or having contact with inmates. Contractor shall be responsible for conducting background investigations, as provided in this Paragraph 8.4, Background and Security Investigations, of this Agreement, for each subcontractor, their employees, and each volunteer who will be working in the CCF or having contact with inmates as a condition for beginning and continuing to perform services within the CCF or in contact with inmates.

## **8.5 BUDGET REDUCTIONS**

- 8.5.1 In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Agreement correspondingly for that fiscal year and any subsequent fiscal year during the term of this Agreement (including any extensions), and the services to be provided by the Contractor under this Agreement shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the Contractor shall continue to provide all of the services set forth in this Agreement.
- 8.5.2 If in the sole discretion of the Contractor, it is determined that the services provided pursuant to this Agreement cannot be continued effectively within the reduced compensation, the Contractor shall have the right to terminate this Agreement with ninety (90) calendar days advance written notice to the County.
  - 8.5.2.1 If the Contractor terminates this Agreement pursuant to Paragraph 8.5.2 above, Contractor shall be authorized to access funds from the UI Reserve to make unemployment insurance payments to affected CCF employees. Upon the notice of termination by the Contractor, the County shall be immediately

released from its obligation to make any remaining contributions to the UI Reserve or to otherwise fully fund the UI Reserve.

## **8.6 COMPLAINTS**

The Contractor shall develop, maintain and operate procedures for receiving, investigating, and responding to inmate complaints.

8.6.1 Within ten (10) Business Days after the effective date of this Agreement, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to inmate complaints.

8.6.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.

8.6.3 If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within ten (10) Business Days for County approval.

8.6.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.

8.6.5 The Contractor shall preliminarily investigate all complaints and notify the County's Project Manager of the status of the investigation within thirty (30) Business Days of receiving the complaint.

8.6.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

8.6.7 Copies of all written responses shall be sent to the County Project Manager within thirty (30) Business Days of delivery to the complainant.

## **8.7 COMPLIANCE WITH APPLICABLE LAW**

8.7.1 In the performance of this Agreement, Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

8.7.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all

claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 8.7 of the Agreement shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

#### **8.8 COMPLIANCE WITH CIVIL RIGHTS LAWS**

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

#### **8.9 COMPLIANCE WITH THE CONTRACTOR'S JURY SERVICE PROGRAM**

Contractor shall comply with the Contractor's own written policies regarding employee jury service, including the City of Taft Human Resources Policies and Procedures Manual, Section 308, Employee Benefits, as such section may be amended from time to time. Compliance with the Kern County and City of Taft jury service policies shall be deemed to be compliance with the Los Angeles County Jury Service Program.

#### **8.10 CONFIDENTIALITY**

8.10.1 Contractor shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and

local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.

8.10.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this Paragraph 8.10, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 8.10 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.

## **8.11 CONFLICT OF INTEREST**

8.11.1 No County employee whose position with the County enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

8.11.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts

that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Paragraph shall be a material breach of this Agreement.

## **8.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

### **8.12.1 Responsible Contractor**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

### **8.12.2 Chapter 2.202 of the County Code**

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Agreement, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five (5) years but may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the County.

### **8.12.3 Non-responsible Contractor**

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

#### 8.12.4 Contractor Hearing Board

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least

five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### **8.12.5 Subcontractors of Contractor**

These terms shall also apply to subcontractors of County Contractors.

### **8.13 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

8.13.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.13.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Agreement maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings

Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

#### **8.14 COUNTY'S QUALITY ASSURANCE PLAN**

- 8.14.1 The County or its agent will evaluate the Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Agreement terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors.
- 8.14.2 The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Agreement or impose other penalties as specified in this Agreement.

#### **8.15 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 8.15.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.
- 8.15.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

#### **8.16 FACSIMILE REPRESENTATIONS**

The County and the Contractor hereby agree to regard facsimile

representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to Paragraph 8.1, Amendments, of this Agreement and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

#### **8.17 FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

#### **8.18 FORCE MAJEURE**

8.18.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Agreement, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").

8.18.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

8.18.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if

applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

#### **8.19 GOVERNING LAW, JURISDICTION, AND VENUE**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

#### **8.20 INDEPENDENT CONTRACTOR STATUS**

8.20.1 This Agreement is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.20.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.20.3 The Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

8.20.4 The Contractor shall adhere to the provisions stated in Paragraph 8.10, Confidentiality, of this Agreement.

#### **8.21 INDEMNIFICATION**

8.21.1 The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability,

including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Agreement.

8.21.2 The County shall indemnify, defend and hold harmless the Contractor, 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, and expenses (including attorney and expert witness fees), arising from or connected with the County's acts and/or omissions arising from and/or relating to this Agreement.

## **8.22 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE**

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Paragraphs 8.22 and 8.23 of this Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Agreement.

### **8.22.1 Evidence of Coverage and Notice to County**

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.
- Renewal Certificates shall be provided to County not less than ten (10) calendar days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor

identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.

- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.
- Certificates and copies of any required endorsements shall be sent to:

Los Angeles County Sheriff's Department  
Attn: Commander David Fender  
450 Bauchet Street  
Los Angeles, California 90012

- Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

#### **8.22.2 Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the

County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

#### **8.22.3 Cancellation of or Changes in Insurance**

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) calendar days in advance of cancellation for non-payment of premium and thirty (30) calendar days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the sole discretion of the County, upon which the County may suspend or terminate this Agreement.

#### **8.22.4 Failure to Maintain Insurance**

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement.

#### **8.22.5 Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

#### **8.22.6 Contractor's Insurance Shall Be Primary**

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

#### **8.22.7 Waivers of Subrogation**

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

#### **8.22.8 Sub-Contractor Insurance Coverage Requirements**

Contractor shall include all subcontractors as insureds under Contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and Contractor as additional insureds on the subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.

#### **8.22.9 Deductibles and Self-Insured Retentions (SIRs)**

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

#### **8.22.10 Claims Made Coverage**

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

#### **8.22.11 Application of Excess Liability Coverage**

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

#### 8.22.12 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

#### 8.22.13 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program. The County acknowledges that Contractor is a public entity member of a liability risk sharing pool called the Central San Joaquin Valley Risk Management Authority (RMA), a Joint Powers Authority formed pursuant to California Government Code Section 6500 et seq. The County agrees that self-insurance with the RMA satisfies all insurance requirements within this Agreement.

#### 8.22.14 County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

### 8.23 INSURANCE COVERAGE

8.23.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$10 million
Products/Completed Operations Aggregate:	\$5 million
Personal and Advertising Injury:	\$5 million
Each Occurrence:	\$5 million

8.23.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to

this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

- 8.23.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) calendar days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.
- 8.23.4 **Sexual Misconduct Liability** insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2 million per claim and \$5 million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.
- 8.23.5 **Law Enforcement Professional Liability** insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$2 million per claim and \$5 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.
- 8.23.6 **Professional Liability/Errors and Omissions** insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$2 million per claim and \$5 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.
- 8.23.7 **Employment Practices Liability** insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$2 million per claim and \$5 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

## **8.24 LIQUIDATED DAMAGES**

8.24.1 If, in the judgment of the Department, the Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the Department, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the Contractor from the County, will be forwarded to the Contractor by the Department, in a written notice describing the reasons for said action. However, prior to the initiation of any action intended to withhold funds pursuant to this Paragraph, the County Project Manager and the Contractor Project Manager shall meet and confer regarding any non-compliance issues. Only upon the determination by the County that the non-compliance cannot or will not be corrected may the provisions of this Paragraph be invoked.

8.24.2 If the Department determines that there are deficiencies in the performance of this Agreement that the Department deems are correctable by the Contractor over a certain time span, the Department will provide a written notice to the Contractor to correct the deficiency within specified time frames. Should the Contractor fail to correct deficiencies within said time frame, the Department may: (a) Deduct from the Contractor's payment, pro rata, those applicable portions; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars (\$100) per day per infraction, and that the Contractor shall be liable to the County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to the Contractor; and/or (c) Upon giving five (5) Business Days notice to the Contractor for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to the Contractor from the County, as determined by the County.

8.24.3 The action noted in Paragraph 8.24.2 shall not be construed as a penalty, but as adjustment of payment to the Contractor to recover the County cost due to the failure of the Contractor to complete or comply with the provisions of this Agreement.

8.24.4 This Paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Agreement provided by law or as specified in Paragraph 8.24.2, and shall not, in any manner, restrict or limit the County's right to terminate this Agreement as agreed to herein.

## **8.25 NONDISCRIMINATION AND AFFIRMATIVE ACTION**

8.25.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

8.25.2 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

8.25.3 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

8.25.4 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

8.25.5 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 8.25 when so requested by the County.

8.25.6 If the County finds that any provisions of this Paragraph 8.25 have been violated, such violation shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement. While the County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Agreement.

8.25.7 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Agreement, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

#### **8.26 NON EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor for the County's purchase of community correctional facility services. This Agreement shall not restrict the County or the Department from acquiring similar, equal, and/or like services from other entities or sources.

#### **8.27 NOTICE OF DELAYS**

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within one (1) Business Day, give notice thereof, including all relevant information with respect thereto, to the other party.

#### **8.28 NOTICE OF DISPUTES**

The Contractor shall bring to the attention of the County Project Manager and/or County Project Director any dispute between the County and the Contractor regarding the performance of services as stated in this Agreement. If the County Project Manager or County Project Director is not able to resolve the dispute, the Sheriff and the Taft City Manager shall resolve it.

## **8.29 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

## **8.30 NOTICES**

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the County Project Director or Contractor Project Director, as the case may be, at the addresses set forth in Paragraph 6.0, Administration of Agreement – County, and Paragraph 7.0, Administration of Agreement - Contractor. Addresses may be changed by either party giving ten (10) calendar days prior written notice thereof to the other party. The County Project Director shall have the authority to issue all notices or demands required or permitted by the County under this Agreement.

## **8.31 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the County agree that, during the term of this Agreement and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

## **8.32 PUBLIC RECORDS ACT**

8.32.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to Paragraph 8.33, Record Retention and Inspection/Audit Settlement, of this Agreement become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

8.32.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

### **8.33 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time.

8.33.1 In the event that an audit of the Contractor is conducted specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) calendar days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

8.33.2 Failure on the part of the Contractor to comply with any of the provisions of this Paragraph 8.33 shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement.

8.33.3 If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, representatives of the County conduct an audit of the Contractor regarding the work performed under this Agreement, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the

difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Agreement or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Agreement exceed the funds appropriated by the County for the purpose of this Agreement.

#### **8.34 RECYCLED BOND PAPER**

Consistent with the County Board of Supervisor's policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Agreement.

#### **8.35 SUBCONTRACTING**

8.35.1 The requirements of this Agreement may not be subcontracted by the Contractor without the advance approval of the County. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Agreement.

8.35.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the County.

8.35.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Contractor employees.

8.35.4 The Contractor shall remain fully responsible for all performances required of it under this Agreement, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

- 8.35.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. The Contractor is responsible to notify its subcontractors of this County right.
- 8.35.6 The County Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.
- 8.35.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.35.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to the County Project Director before any subcontractor employee may perform any work hereunder.

**8.36 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in Paragraph 8.13, Contractor's Warranty of Adherence to County's Child Support Compliance Program, of this Agreement shall constitute default under this Agreement. Without limiting the rights and remedies available to the County under any other provision of this Agreement, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Agreement pursuant to Paragraph 8.38, Termination for Default, of this Agreement and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

**8.37 TERMINATION FOR CONVENIENCE**

- 8.37.1 This Agreement may be terminated, in whole or in part, by either the County or the Contractor, from time to time, when such termination is deemed to be in the best interest of the terminating party. Termination of this Agreement shall be effected by notice of termination to the other party specifying the extent to which

performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ninety (90) calendar days after the notice of termination is sent.

8.37.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Agreement on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.37.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Agreement shall be maintained by the Contractor in accordance with Paragraph 8.33, Record Retention and Inspection/Audit Settlement, of this Agreement.

## **8.38 TERMINATION FOR DEFAULT**

8.38.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Agreement, if, in the judgment of County's Project Director:

- Contractor has materially breached this Agreement; or
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Agreement; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement and in either case, fails to demonstrate convincing progress toward a cure within five (5) Business Days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.38.2 If, after the County has given notice of termination under the provisions of this Paragraph 8.38, it is determined by the County that the Contractor was not in default under the provisions of this Paragraph 8.38, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 8.37, Termination for Convenience, of this Agreement.

8.38.3 The rights and remedies of the County provided in this Paragraph 8.38 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **8.39 TERMINATION FOR IMPROPER CONSIDERATION**

8.39.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the Contractor's performance pursuant to this Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

8.39.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.39.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

#### **8.40 TERMINATION FOR INSOLVENCY**

8.40.1 The County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) calendar days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or

- The execution by the Contractor of a general assignment for the benefit of creditors.

8.40.2 The rights and remedies of the County provided in this Paragraph 8.40 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **8.41 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which the County may in its sole discretion, immediately terminate or suspend this Agreement.

#### **8.42 VALIDITY**

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **8.43 WAIVER**

No waiver by the County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **8.44 WARRANTY AGAINST CONTINGENT FEES**

8.44.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.44.2 For breach of this warranty, the County shall have the right to terminate this Agreement and, at its sole discretion, deduct from

the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**8.45 WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

8.45.1 Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

8.45.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Agreement will maintain compliance, with Los Angeles County Code Chapter 2.206.

**8.46 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 8.45, Warranty of Compliance with County's Defaulted Property Tax Reduction Program, of this Agreement shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within ten (10) calendar days of notice shall be grounds upon which County may terminate this Agreement and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

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

The County is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under this Agreement, the Contractor provides services to the County and the Contractor receives, has access to, and/or creates Protected Health Information as defined in Exhibit D in order to provide those services. The County and the Contractor therefore agree to the terms of Exhibit D, Contractor's Obligations As a "Business Associate" Under Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the

Health Information Technology for Economic and Clinical Health Act (HITECH), of this Agreement.

#### **8.48 PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION**

8.48.1 The Contractor shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of the Contractor's work under this Agreement. County shall inform the Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support the Contractor's defense and settlement thereof.

8.48.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, the Contractor, at its sole expense, and providing that County's continued use of the system is not materially impeded, shall either:

- Procure for County all rights to continued use of the questioned equipment, part, or software product; or
- Replace the questioned equipment, part, or software product with a non-questioned item; or
- Modify the questioned equipment, part, or software so that it is free of claims.

8.48.3 The Contractor shall have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by the Contractor, in a manner for which the questioned product was not designed nor intended.

**AGREEMENT  
FOR  
COMMUNITY CORRECTIONAL FACILITY SERVICES**

IN WITNESS WHEREOF, Contractor has caused this Agreement to be executed by its duly authorized representative, and the County of Los Angeles, by order of its Board of Supervisors, has caused this Agreement to be executed on its behalf by the Chief Executive Officer, on the dates written below.

**CITY OF TAFT**

By \_\_\_\_\_  
Randy Miller, Mayor

Date: \_\_\_\_\_

**COUNTY OF LOS ANGELES**

By \_\_\_\_\_  
William T Fujioka  
Chief Executive Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
JOHN F. KRATTLI  
County Counsel

By \_\_\_\_\_  
Deputy County Counsel

APPROVED AS TO FORM:  
DAVID A. PRENTICE  
City Attorney

By \_\_\_\_\_

**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. Contractor shall provide housing, sustenance, supervision, education, inmate programs, and other services and accommodations to inmates provided by County at the Taft Community Correctional Facility ("CCF"), located at 330 Commerce Way, Taft, California 92368.
2. CCF shall operate as a Type III Adult Detention Facility to house an inmate population not to exceed 560 inmates.
3. Contractor shall provide and maintain adequate staffing to provide all required services to inmates when such inmates are under the custody and control of Contractor.
4. Once the County transfers custody of an inmate, such inmate shall be the sole responsibility of Contractor and shall be under the custody and control of Contractor.
5. Contractor shall ensure the secure custody, care, and safekeeping of all inmates. Contractor shall be solely responsible for developing and implementing CCF policies, procedures, rules, and regulations related to the secure custody, care, and safekeeping of inmates.
6. Contractor shall 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, Title 24, and all CCF policies, procedures, rules, and regulations. County shall have no liability for Contractor's failure to comply with such federal, State, and local rules, regulations, policies, procedures, and correctional standards. County shall have no liability resulting from any CCF 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. Contractor shall provide to County all CCF policies, procedures, rules, and regulations immediately upon request by County. Contractor shall immediately notify County in the event of any allegation, investigation, or finding related to Contractor's non-compliance or violation of any federal, State, and local rules, regulations, policies, procedures, and correctional standards.
7. Contractor shall, 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. Contractor shall provide housing, sustenance, supervision, education, inmate programs, and other services and accommodations at the CCF solely to inmates from the County during the term of this Agreement. Contractor shall not house inmates or offenders from any other law enforcement agency or public or private entity, nor utilize the CCF in any way for inmates or offenders from any other law enforcement agency or public or private entity
9. County shall have the right to audit, inspect, review, and examine the CCF facility 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 inmate incidents, and examination of documents related to the care and treatment of inmates. At County's sole discretion, such audits, inspections, reviews, and examinations may be conducted by County and/or its agents at anytime with or without advance notice to Contractor.

**B. ORGANIZATION OF CCF**

1. A full-time Police Chief, reporting to the City Manager, shall serve as the Facility Administrator and shall have overall responsibility for the administration, security, and safety of the facility, staff, and inmates.
2. CCF staff shall be deployed in accordance with the Minimum Staffing Plan, attached as Exhibit C of this Agreement, to assist in administration and operation of CCF.
3. A Corrections Captain shall serve as the Facility Manager, who shall oversee the overall administrative side of the CCF and report to the Chief of Police.
4. A Corrections Captain shall serve as the Security Captain, who shall oversee all aspects of security and the well-being of the inmates and report to the Facility Manager.
5. Corrections Lieutenants shall serve as Watch Commanders, with Corrections Sergeants shall serve as Watch Commanders/Security and Escort (S/E) Officers. The Corrections Lieutenants and Sergeants shall be responsible for the management of all security functions, which includes the supervision of security staff in maintaining a secure and safe facility for both staff and inmates.

**C. SECURITY AND CLASSIFICATION OF INMATES**

1. The security and classification level of inmates eligible for CCF participation are limited to the following adult inmates sentenced to County jail:

- a. Long-term offenders with no known pending court appearances
- b. No serious medical or mental health needs
- c. Low to medium security classification

**D. 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 inmates through education and rehabilitation and providing dignity in the jails.
2. Contractor shall provide and maintain inmate programs for inmates in keeping with the spirit of Education Based Incarceration. Inmate programming shall be sufficient to meet the minimum standards required by Title 15 and aimed at reducing recidivism, increasing employability, and reunifying families.
3. Inmate 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. Contractor may provide credentialed instructors to provide classroom instruction in General Educational Development ("GED") test preparation, basic education, job-seeking skills, pre-release, and other areas related to employment.
5. Work and vocational programs available to inmates may consist of employment/on-the-job training in food preparation, housekeeping, laundry services, groundskeeper, and building maintenance. These opportunities will include job assignments within the facility, as well as the off-site work crews.
6. Religious services and counseling may be provided by local volunteer groups and organizations.
7. Recreation opportunities may include indoor and outdoor programs. The day rooms in the living units are sized to provide adequate room for indoor recreational activities. The proposed facility configuration also allows for outdoor activities, such as volleyball, basketball, horseshoes, and resistance training in accordance with Title 15 policies and procedures.
8. Visiting privileges shall be granted to inmates in accordance with Title 15 requirements. A regular visitation schedule shall be established, with contact visiting in a large indoor visitation area.

**E. PROGRAM OPERATIONS**

1. Program operations shall be directed by the Police Chief, in compliance with all applicable laws, rules, regulations, policies, procedures, and correctional standards, as well as all CCF policies, procedures, rules, and regulations.
2. Contractor shall develop a policy and procedure manual which describes local regulations on procedures for intake, shakedown, head-count, inmate cell housing, visiting, recreation, food services, medical services, disciplinary, inmate appeal, inmate release, facility armory, emergency operations, and security related operations. Particular attention shall be paid to procedures for searching inmates returning from off-site work details.
3. Contractor shall provide to County all CCF policies, procedures, rules, and regulations related to program operations immediately upon request by County.

**F. STAFFING**

1. Contractor, through the Chief of Police, shall be solely responsible for the recruitment, hiring, and training of the CCF staff.
2. CCF staff shall meet CCF and CA POST staffing requirements and background clearances.
3. All persons providing security/custody at CCF shall be Correctional Officers, who have completed the minimum standards for training of local correctional officers established by CSA pursuant to California Penal Code section 6035.
4. CCF staff shall have specific duties relating to the security of the facility and the safety of the community, staff, and inmates.
5. CCF staff shall supervise inmates at all times during inmate programming and inmate activities and shall have direct visual observation of inmates at specified times throughout their designated work day at the CCF.
6. CCF staff, or persons trained pursuant to State of California, Corrections Standards Authority ("CSA"), Standards and Training for Corrections ("STC") program standards and guidelines, shall supervise, at all times, all inmates assigned to Off Reservation Work Details ("ORWD") pursuant to Section P, Inmate Work/Off Reservation Work Detail, of this Statement of Work.
7. CCF staff recruitment shall follow the guidelines and standards for personnel selection established by the CSA, as part of its STC program. Preferential consideration shall be given to those individuals knowledgeable in the operation of detention facilities or who have had training in specific aspects of jail operations and management, custody procedures, and inmate supervision.

8. The City of Taft shall not discriminate on the basis of race, sex, age, religion or otherwise unlawful characteristics, in its recruiting and hiring practices. Other than prior experience, education and training in this field of work, specific individual qualities on which employment will rely include: emotional maturity and stability; satisfactory record as a law-abiding citizen; understanding of persons under restraint; sound judgment; alertness; willingness to work assigned shifts; normal or corrected vision and hearing; and sound medical physical condition.

**G. COMMUNICATION OPERATIONS**

1. The basic function of the communications system is to satisfy the immediate information needs of the law enforcement agency in the course of its normal daily activities and during emergencies. Emergencies place the greatest demands upon the communications system and tests the capability of the system to fulfill its functions. Measures and standards of performance are necessary to assess the effectiveness with which any department, large or small, uses available information technology in fulfillment of its missions. Operations are more efficient and officer safety is enhanced when control booth officers, supervisors, and fellow officers know the status of officers, their locations and the nature of cases.
2. Contractor shall at all times maintain radio and other communication operations in the CCF which are adequate and appropriate for the administration, security, and safety of the facility, staff, and inmates.
3. CCF radio operations shall be conducted in accordance with Federal Communications Commission procedures and guidelines.

**H. STAFF TRAINING**

1. Contractor shall develop and implement a training program for all custody staff hired for the facility. The training program shall be in accordance with training standards and guidelines developed by CSA and promulgated through the STC program.
2. Custody staff training shall be provided by various training facilities and/or institutions. These programs shall be certified by the CSA. In addition, basic first aid training and CPR training shall be included as part of the training program. Custody staff training shall focus on, but shall not be limited to:
  - Inmate supervision and disciplinary procedures
  - Security and emergency procedures
  - Inmate correctional programs
  - Movement and transportation of inmates
  - Inmate appeal
  - Inmate/staff relations

- Report writing
  - Inmate investigations
  - Legal responsibilities and liabilities
  - Defensive tactics
  - Fire and life safety
  - Collection, identification and preservation of evidence
  - Judicial prodders
  - Courtroom demeanor and testifying
  - PREA
  - Sexual harassment
  - Firearms
3. The training program shall provide for separate levels of training corresponding to the level of responsibility and authority of the staff positions. In addition, continuing custody training programs and in-service programs will be provided to update custodial managers and staff on recent legal developments, new philosophy and procedures, and special issues.

**I. MEDICAL SERVICES**

1. Contractor shall provide all necessary medical care, both Routine Medical Care and Non-Routine Medical Care.
2. All medical care shall be provided in compliance with Title 15 requirements and as other required by law.
3. Contractor shall develop and implement CCF policies and procedures for the provision of all medical care, including medical procedures for the dispensing of medication.
4. Contractor shall provide all Routine Medical Care for inmates either on-site at CCF, or off-site as necessary. CCF shall contain an examination room, Nurse's office, and secure storage for pharmaceutical and medical instruments.
5. Routine Medical Care may be provided via contracted medical and dental providers, provided that such Routine Medical Care is provided in accordance with the minimum requirements set forth herein and the requirements of medical and dental plans provided pursuant to agreements between Contractor and contracted medical and dental provider(s).
6. Contractor's Routine Medical Care shall include but shall not be limited to:
  - a. Sick Call – 5 days per week
  - b. Emergency Sick Call/Triage – weekends
  - c. Inmate annual health history and physical examinations

## EXHIBIT A

- d. Medication administration – generally twice per day, with medications requiring more frequent administration provided as required
  - e. Licensed physician on-site a minimum of 12-16 hours per week, with physician available on call 24 hours per day, seven days per week.
  - f. Registered Nurse on-site Monday through Friday for eight hours on a day shift. All other shifts staffed with Licensed Vocational Nurses.
  - g. Dentist and dental assistant by appointment for the provision of routine dental care, following medical consultation by the medical staff.
  - h. Temporary Housing Units shall be provided as separate facilities for viral-type illnesses requiring short-term isolation.
7. Non-Routine Medical Care may be provided off-site by County approved medical and dental providers located within the vicinity of the CCF. CCF procedures, including transportation and custody of inmates, shall be developed and implemented for handling Non-Routine Medical Care for inmates. All procedures shall be made available to County immediately upon request.
8. Contractor shall provide transportation to and from the medical or dental provider facility for all inmates requiring Non-Routine Medical Care. In emergency, life-threatening situations, transportation may be provided by ambulance. The Contractor shall also provide supervision of the inmate while at the medical or dental provider facility for treatment. The Contractor shall provide supervision until such time as the inmate is transported back to the CCF or the County assumes supervision of the inmate.
9. If, either upon arrival from County or during incarceration, Contractor's medical staff determines that an inmate (1) is not in a sufficient medical condition to be, or remain to be, housed at CCF, or (2) has serious medical or mental health needs which cannot be accommodated at CCF, then said inmate shall be returned to County.
10. The medical services required herein are based upon Title 15 standards. If the standards change as a result of realignment, or through statute, then such changes shall be discussed by County and Contractor. Any such modifications to the requirements hereunder shall be in the form of a written Amendment in accordance with Paragraph 8.1, Amendments, of the Agreement.

### **J. FOOD SERVICES**

1. Contractor shall provide sustenance and food services to inmates at CCF, which meet the minimum dietary requirements dictated by Title 15.
2. Food shall be prepared, at CCF, under the direction of a Cook Supervisor, by medically screened inmate food services workers.

## **EXHIBIT A**

3. Contractor shall arrange for the purchase of all necessary foods to comply with the minimum dietary requirements dictated by Title 15.
4. Inmate meals shall be prepared and served three (3) times within each 24 hour period.
5. Contractor shall provide meal planning, kitchen supervision, and meal preparation, which may be provided by the Cook Supervisor.
6. Necessary food storage and refrigeration space shall be provided, as well as an adequately sized kitchen with required appliances.
7. All food shall be prepared and stored in accordance with all State and local codes.

### **K. HOUSING AND HOUSEKEEPING SERVICES**

1. Contractor will provide dormitory style housing units for inmates.
2. Dormitory areas shall contain both day rooms and sleeping space and shall meet the requirements of Title 15 and Title 24.
3. Contractor shall develop and implement a maintenance and housekeeping plan to ensure the proper upkeep of the dormitories.
4. All inmates shall be required to comply with procedures for maintaining their living space.
5. Contractor shall provide all bed linens and towels for use by inmates. A schedule for the regular issuance of linens and towels shall be developed and maintained.
6. Contractor shall develop, and provide to each inmate, an orientation manual to educate new inmates on CCF policies and procedures. The manual shall address housekeeping procedures, sick call/pill call procedures, and policies regarding behavior and discipline, as well as daily routines and practices.

### **L. INMATE CLOTHING**

1. Contractor shall provide all inmate clothing.
2. Inmate clothing shall be similar to the type to that is provided by County.
3. Inmate clothing shall be suitable to the climate and to specific work assignments, as required.

## EXHIBIT A

4. Contractor shall develop a plan, procedures, and a schedule for the exchange of clean inmate clothing.
5. Laundry services, including the repair of clothing, shall be provided at CCF by resident work crews, which are supervised by a Corrections Officer.

### **M. FINANCIAL MANAGEMENT OF FUNDS AND INTERNAL CONTROL**

1. Contractor shall establish and maintain sufficient accounting, internal control, financial reporting, and administrative capacity to effectively administer the services required under this Agreement.
2. The Contractor's Fiscal Officer shall be responsible for accounting of all program and facility costs, maintaining all financial records including inmate funds, and serving as Contractor's liaison to County fiscal authorities. The Contractor's Fiscal Officer shall be assisted by the Chief of Police.
3. The Contractor's Fiscal Officer shall 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 the Agreement, 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 an outside accountant employed by County.
5. When an inmate is transferred to Contractor from County, the balance of such inmate's trust account shall also be transferred to Contractor. If the inmate is transferred back to County or to another facility, the balance of the inmate's trust account shall also be transferred. Such money transfers may be done by check and accounted for by the Contractor's Fiscal Officer.

### **N. FACILITY OPERATIONS**

1. Contractor shall provide and maintain a community correctional facility in accordance with California Penal Code section 6250 et seq.
2. Contractor shall provide and maintain CCF in accordance with all federal, State, and local rules, regulations, policies, procedures, and correctional standards, including but not limited to Title 15 and Title 24, and all CCF policies, procedures, rules, and regulations.
3. Contractor shall comply with and maintain all local permit requirements, all fire clearances, and all other governmental approvals required to operate CCF.
4. In the event Contractor fails to maintain at all times all required local and/or governmental approvals or modifies or otherwise changes the locally required

## EXHIBIT A

conditional use permit or any other discretionary or ministerial land use approval regulating the size or manner in which CCF is used in a manner inconsistent with the purpose of this Agreement or which otherwise substantially interferes with Contractor's obligations to County, Contractor shall immediately provide notice to the County Project Director. County may then, at its sole discretion, (1) immediately terminate this Agreement pursuant to Paragraph 8.38, Termination for Default, effective with the change or loss in conditional use permit or any other discretionary or ministerial land use approval regulating the size or manner in which CCF is used, (2) modify the terms and conditions of this Agreement in a manner reasonably related to the change, and/or (3) require reasonable costs incurred in the relocation of inmates housed at CCF to another correctional facility.

5. Prior to performing services under this Agreement, Contractor shall deliver to County evidence of a full inspection of CCF by CSA and the corresponding notice of compliance, which evidences the rated bed capacity of the CCF.
6. Contractor shall perform ongoing inspections and tests of the CCF building systems, including, but not limited to, all security, fire, and life-safety systems.
7. Contractor shall maintain an emergency operations manual that identifies a plan of action in the event of an emergency, such as labor strike, natural disaster, or inmate unrest. The emergency operations procedures shall include mutual aid agreements with surrounding law enforcement agencies.
8. Contractor shall maintain compliance, in conjunction with the Kern County Fire Department, State Fire Marshall, and Taft CCF policies and procedures, for providing access to the facility for emergency vehicles.

### **O. INMATE WORK/OFF RESERVATION WORK DETAIL**

1. Inmates may be assigned to work assignments within and on the outside of the security perimeter to assist the facility in its daily operations, educational programs, and/or vocational programs. Inmates will be assigned through the unit classification process. Inmate custody levels and inmate program needs shall be used to determine inmate assignments at the facility.
2. All work assignments shall be assigned and performed in accordance with Title 15 requirements or as otherwise required by law.
3. Inmates may also be assigned to the Off Reservation Work Details ("ORWD"), including but not limited to Taft Cemetery, Garage, City Hall, and Public Works crews. Inmates assigned to ORWD shall be supervised in accordance with Section F(6) above. Contractor shall be solely responsible for injuries sustained and any and all workers compensation liability, if any, resulting from an inmate's assignment to ORWD or other outside work detail.

4. Contractor shall be solely responsible for any inmate compensation associated with any work assignment, including ORWD.

**PRICE SCHEDULE**

1. Facility Per-Diem Rate

The facility per-diem rate shall be an all-inclusive daily flat rate for all housing, sustenance, supervision, education, inmate programs, Routine Medical Care, and other services and accommodations as required by this Agreement and otherwise by law. Notwithstanding, the facility per-diem rate does not include Non-Routine Medical Care Costs or Non-Routine Medical Custodial Costs.

**MINIMUM INMATE BED SPACE**

512

**DAILY PER-DIEM RATE**

\$31,000\*

\*The above facility per-diem rate is based upon a capacity of 512 available inmate beds per day. If, due to maintenance, emergency repairs, or any other occurrence, the bed space made available by Contractor falls below the minimum 512 beds, then the daily rate shall be calculated on the basis of an inmate per-diem at \$60.55 per available bed.

2. Non-Routine Medical Custodial Costs

The flat hourly rate for transportation and custody supervision during Non-Routine Medical Care shall not exceed \$49.13 per hour per custody staff member performing services.

3. Special Custodial Costs

The flat hourly rate for transportation and custody supervision of an inmate to any destination previously approved by the County shall not exceed \$49.13 per hour per custody staff member performing services.

## MINIMUM STAFFING PLAN

### 512 Beds

#### **1 Watch (2200-0600)**

- 1 – Watch Commander (Lieutenant)
- 1 – Search & Escort Officer (Sgt.)
- 1 – Control “A” Officer
- 1 – Control “B” Officer
- 2 – A Deck Officers
- 2 – B Deck Officers
- 1 – LVN

#### **2 Watch (0600 – 1400)**

- 1 – Watch Commander (Lieutenant)
- 1 – Search & Escort Officer (Sgt.)
- 1 – Control “A” Officer
- 1 – Control “B” Officer
- 2 – A Deck Officers
- 2 – B Deck Officers
- 1 – RN or LVN, plus Physician Monday – Friday
- 2 – Teachers
- 1 – Facility Manager
- 1 – Security Captain
- 1 – Program Manager
- 1 – Laundry Officer
- 1 – Receiving and Releasing Officer
- 2 – Recreation Yard Officers
- 1 – Visiting Officer (Weekends)

#### **3 Watch (1400-2200)**

- 1 – Watch Commander (Lieutenant)
- 1 – Search & Escort Officer (Sgt.)
- 1 – Control “A” Officer
- 1 – Control “B” Officer
- 2 – A Deck Officers
- 2 – B Deck Officers
- 1 – LVN
- 1 – Laundry Officer
- 1 – Receiving and Releasing Officer
- 2 – Recreation Yard Officers

**260 Beds**

**1 Watch (2200-0600)**

- 1 – Watch Commander (Lieutenant)
- 1 – Search & Escort Officer (Sgt.)
- 1 – Control “A” Officer
- 2 – A Deck Officers
- 1 – LVN

**2 Watch (0600 – 1400)**

- 1 – Watch Commander (Lieutenant)
- 1 – Search & Escort Officer (Sgt)
- 1 – Control “A” Officer
- 2 – A Deck Officers
- 1 – RN or LVN, plus Physician Monday – Friday
- 2 – Teachers
- 1 – Facility Manager
- 1 – Security Captain
- 1 – Program Manager
- 1 – Laundry Officer
- 1 – Receiving and Releasing Officer
- 2 – Recreation Yard Officers
- 1 – Visiting Officer (Weekends)

**3 Watch (1400-2200)**

- 1 – Watch Commander (Lieutenant)
- 1 – Search & Escort Officer (Sgt)
- 1 – Control “A” Officer
- 2 – A Deck Officers
- 1 – LVN
- 1 – Laundry Officer
- 1 – Receiving and Releasing Officer
- 2 – Recreation Yard Officers

**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

## EXHIBIT D

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

## EXHIBIT D

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 related.

(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

**EXHIBIT D**

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 knowledge 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; and
- (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.
- (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