

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

304



FROM: Purchasing and Fleet Services Department

SUBMITTAL DATE:
10/7/13

SUBJECT: PROFESSIONAL SERVICE AGREEMENT WITH AMERICAN FORENSIC NURSES (AFN) FOR BLOOD DRAW, BIOLOGICAL EVIDENCE AND URINE COLLECTION SERVICES FOR THE SHERIFF'S DEPARTMENT, ALL DISTRICTS, (\$937,500)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the agreement with American Forensic Nurses in the annual amount of \$187,500 for five (5) years, renewable in one-year increments, and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459.4, to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation that do not exceed the CPI index, based on the availability of funding.

(Continued on Page 2)

Robert J. Howdysshell

Robert J. Howdysshell, Director
Purchasing & Fleet Services Dept.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 187,500	\$ 187,500	\$ 937,500	\$	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ 187,500	\$ 187,500	\$ 937,500	\$	

SOURCE OF FUNDS: Sheriff Department Budget	Budget Adjustment: No
	For Fiscal Year: 13/14

C.E.O. RECOMMENDATION:

APPROVE

BY: *Serena Chow*
Serena Chow

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone and Ashley
Nays: None
Absent: Benoit
Date: November 5, 2013
xc: Purchasing, Sheriff

Kecia Harper-Ihem
Clerk of the Board

By: *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.: #3.26 on 4/29/08 | District: All | Agenda Number:

3-37

APPROVED COUNTY COUNSEL DATE 10/16/13
 BY: *NEAL R. KIPNIS*
 Departmental Concurrence
 William A. J. 10/28/13
 William A. D. 10/28/13
 Sheriff's Department

- A-30
- 4/5 Vote
- Positions Added
- Change Order

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: PROFESSIONAL SERVICE AGREEMENT WITH AMERICAN FORENSIC NURSES (AFN) FOR
BLOOD DRAW, BIOLOGICAL EVIDENCE AND URINE COLLECTION SERVICES FOR THE SHERIFF'S
DEPARTMENT, ALL DISTRICTS, (\$937,500)**

DATE: October 7, 2013

PAGE: Page 2 of 3

BACKGROUND:

Summary (continued)

The Sheriff requires blood draw, biological evidence, and urine collection services that are available twenty-four hours a day, seven days a week. This availability facilitates the collection of biological fluid samples, DNA samples, and the collection of sexual assault evidence. This type of collection needs to be completed in a clinically approved manner to comply with state law, and fulfill criminal court requirements for the "chain of custody" of the materials collected.

Prior to the reliance upon a blood draw service, Riverside County Sheriff's Department personnel had to transport suspects to a local hospital emergency room and wait for hospital staff to obtain the appropriate biological evidence from subjects involved in criminal investigations. This process often resulted in a time consuming effort to obtain the evidence. Hence, there was a need to make the collection of blood evidence simpler and more efficient. The contracted service vendor must respond to law enforcement's need to obtain necessary evidence collection within thirty minutes of arrest.

Impact on Citizens and Businesses

The residents and businesses benefit from an around-the-clock evidence collection service company with a thirty-minute response time. The competitive bid process ensures that the awarded vendor provides qualified technicians trained to make collections in a manner that complies with state law and will withstand judicial scrutiny.

Contract History and Price Reasonableness

Purchasing and Fleet Services released a request for proposal (RFP#SHARC-216) on behalf of the Sheriff's Department, which was electronically sent to forty-two (42) vendors, and advertised on the Purchasing website. The County received two bid responses.

The proposals were reviewed by an evaluation team consisting of personnel from the Sheriff's Department. The evaluation team reviewed and scored each proposal based on the bidder's overall responsiveness to the RFP requirements, bidder experience, ability, qualifications, credentials, resumes, license, certifications, project methodology, cost, references, financial status, clarifications, and exceptions or deviations. The final competitive bids ranged from \$187,500 to \$205,500. Based on the evaluation of the initial proposals, American Forensic Nurses (AFN) was selected by the evaluation team as the lowest, responsive/responsible vendor.

AFN has provided evidence collection services to the Sheriff's Department for more than five years. The firm was awarded this services contract once previously as the result of a competitive bid process.

PROFESSIONAL SERVICE AGREEMENT

For

BLOOD DRAW/BIOLOGICAL EVIDENCE/URINE COLLECTION SERVICES

Between

COUNTY OF RIVERSIDE

and

AMERICAN FORENSIC NURSES (AFN))



TABLE OF CONTENTS

<u>SECTION HEADING</u>	<u>PAGE NUMBER</u>
1. Description of Services	3
2. Period of Performance	3
3. Compensation	3
4. Alteration or Changes to the Agreement	5
5. Termination.....	5
6. Ownership/Use of Contract Materials and Products	6
7. Conduct of Contractor.....	6
8. Inspection of Service: Quality Control/Assurance	7
9. Independent Contractor	7
10. Subcontract for Work or Services	8
11. Disputes	8
12. Licensing and Permits	8
13. Use by Other Political Entities	9
14. Non-Discrimination	9
15. Records and Documents	9
16. Confidentiality	9
17. Administration/Contract Liaison.....	10
18. Notices	10
19. Force Majeure	11
20. EDD Reporting Requirements	11
21. Hold Harmless/Indemnification	11
22. Insurance	12
23. General	15
Exhibit A-Scope of Service.....	17
Exhibit B- Payment Provisions	21
Attachment 1-HIPAA Business Associate Attachment to the Agreement	22

This Agreement, made and entered into this ____ day of _____, 2013, by and between AMERICAN FORENSIC NURSES., (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of four (4) pages at the prices stated in Exhibit B, Payment Provisions, consisting of one (1) page, and Attachment I, HIPAA Business Associate Attachment to the Agreement, consisting of NINE (9) pages.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through September 30, 2014 with the option to renew for four (4) additional years, each year shall be renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed one hundred eighty seven thousand five hundred dollars annually (\$187,500) including all expenses. The COUNTY is not responsible for any fees or costs incurred

above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas of blood draw, biological evidence and urine collection and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Riverside County Sheriff Department
4095 Lemon Street
Riverside, CA 92501
Attention: Accounting and Finance, First Floor

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (SHARC-96148-001-09/14); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any

reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 CONTRACTOR is debarred from the System for Award Management (SAM). If the agreement is federally or State funded, CONTRACTOR must notify the COUNTY immediately of the debarment. Reference: (System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.7 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no

employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the

County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public

disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

16.3 The CONTRACTOR is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto. Please refer to Attachment 1 of this agreement.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Purchasing and Fleet Services
2980 Washington Street
Riverside, CA 92504
Walter Mack

CONTRACTOR

American Forensic Nurses (AFN)
255 North El Cielo Road, Suite 195
Palm Springs, CA 92262
Faye Battiste Otto, RN, President

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

21.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

21.5 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's

limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. Professional Liability (ONLY TO BE INCLUDED IN CONTRACTS WITH SERVICE PROVIDERS INCLUDING BUT NOT LIMITED TO ENGINEERS, DOCTORS, AND LAWYERS). Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

E. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

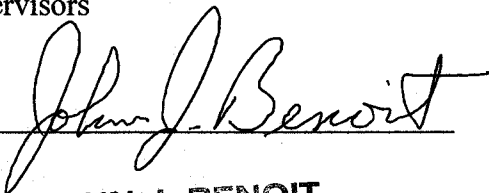
23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

COUNTY:

County Administration Center
4080 Lemon Street, 4th Floor
Riverside, CA 92501
Board of Supervisors

Signature: _____



Print Name: JOHN J. BENOIT

Title: Chairman of the Board of Supervisors

Dated: NOV 05 2013

CONTRACTOR:

American Forensic Nurses (AFN)
255 North El Cielo Road, Suite 195
Palm Springs, CA 92262
Faye Battiste Otto, RN, President

Signature: _____



Print Name: Faye Battiste Otto, RN

Title: President

Dated: 10-2-13

FORM APPROVED COUNTY COUNSEL

BY: NEAL R. KIPNIS DATE

ATTEST: KECIA HARRER-IHEM, Clerk

By _____
DEPUTY

EXHIBIT A
CONTRACTOR REQUIRED SCOPE OF SERVICE
TO BE PROVIDED TO THE COUNTY

1. **Blood Draw:** Phlebotomy is the drawing of blood from a subject for a variety of purposes, transfusion, diagnosis, content analysis, or experiment. Law enforcement's interest in a blood sample is generally to obtain content analysis as evidence in narcotic or alcohol related events, and to obtain DNA samples for comparison to bodily fluid or body part samples collected at a crime scene. The general authority of law enforcement to obtain evidence is covered under Article 1, Section 13 of the California State Constitution. Law enforcement is also obligated by state law to offer blood draws in the investigation of driving under the influence cases, per Section 23158 of the California Vehicle Code. Blood draws are also a part of sex offender and arson registrant DNA collection under Section 296 of the California Penal Code. The obtaining of blood or urine samples is also an integral part of many non-driving-under-the-influence criminal investigations. Blood or urine samples may be requested for a variety of reasons, such as:
 - a. Blood alcohol content analysis.
 - b. Controlled substance content analysis.
 - c. DNA analysis.
 - d. For storage, later analysis, or to be a control sample.

2. **Urine Specimen Collection:** CONTRACTOR may be asked to conduct urine collection for content analysis.

3. **Suspect Sex Kit:** CONTRACTOR is expected to conduct evidence collection from a sexual assault suspect (blood, nail scraping, hair, combing and such).

4. **Dry Run (blood, urine, sex assault kit):** Occasionally it is impossible or impractical to obtain a blood sample or urine collection in a medically approved manner. The CONTRACTOR may have been unable to complete a sexual assault kit, or other service, for a variety of legitimate reasons. However, the CONTRACTOR may have dispatched staff at the request of law enforcement, and may have expended supplies in the anticipation of services being rendered. It is suggested that this fee be less than that charged for a successful request for service.

5. **Supplies:** The CONTRACTOR is expected to supply their own equipment and collection containers. These items must meet medical standards and evidence standards for submission in a court of law. Sample collection containers are available through local California Department of Justice Crime Labs and sample screening vendor.

6. **Disposal of Waste:** The CONTRACTOR will dispose of all waste in accordance with all applicable laws and regulations. The CONTRACTOR will be responsible for providing sharps containers at each Sheriff's station or corrections facility for the disposal of used syringes. The CONTRACTOR will be required to provide for waste disposal at remote sites as needed (for example: blood draws performed at DUI checkpoints, accident scenes, boating enforcement programs, and such).

7. **Licensing:** In the performance of services the CONTRACTOR shall:
 - a. Possess and maintain all required licenses for the performance of duties required under this contract. The CONTRACTOR will insure that all of the CONTRACTOR'S staff, providing services under this contract, possess and maintain required licenses in the performance of duties hereunder. The CONTRACTOR will provide the county copies of licenses upon request.
 - b. Possess and maintain, as required by law, all applicable medical waste permits issued by the Riverside County Department Environmental Health, and any other necessary permits sufficient to encompass the CONTRACTOR total volume of medical waste generated and/or transported.

8. **Court Time:** The CONTRACTOR will be available to provide expert court testimony for all of the services provided. The CONTRACTOR'S staff may be subpoenaed to testify in actions related to their participation in the chain of custody, or the circumstances of the collection of evidence. This cost should be factored into the bid for each service (blood draw, urine sample collection, suspect sexual assault kit). If there is a separate charge, the COUNTY Department should pay only for the time spent testifying or at court waiting to testify, not for being "on-call.

9. The CONTRACTOR shall provide this service with personnel properly licensed or certified in the State of California such as Registered Nurses, Licensed Vocational Nurses, Paramedics, Certified Phlebotomists, or other persons certified to draw blood and urine samples and collect sexual assault evidence from rape suspects in the State of California.
 - a. Only licensed personnel, in accordance with all applicable statutes and regulations, are to be used in the obtaining of blood or urine samples utilized in the investigation of California Vehicle Code violations.
 - b. The CONTRACTOR shall comply with all applicable statutes and regulations for the collection of blood or urine samples for alcohol testing. And use California Department of Justice (DOJ) gray topped tubes for alcohol analysis distributed by the DOJ for the collection of blood samples.

10. The CONTRACTOR and their employees shall be familiar with the handling of evidence and the proper protocol for obtaining blood and suspect rape evidence, as well as any other evidence collected. They shall maintain the correct chain of evidence in accordance with Riverside County Sheriff's Department policies and procedures. Upon award, Sheriff Procedures will be given to CONTRACTOR.

11. Subjects from whom blood is to be drawn or evidence collected may be recalcitrant. The CONTRACTOR shall assure that all personnel have experience with recalcitrant subjects, are trained to deal with recalcitrant subjects and are willing to undertake dealing with possible recalcitrant subjects in the course of performing this service.

12. The maximum acceptable time for a response to a call for service is thirty- (30) minutes from the time requested to arrival at the scene. This should include calls for service in the Blythe Sheriff's Station service area.

13. Acceptable response time from the time of notification shall be no longer than thirty- (30) minutes. CONTRACTOR will be monitored pursuant to response times. Response times shall commence from the time of initial contact by Sheriff's dispatch and conclude upon arrival at the location requested by Sheriff's personnel. CONTRACTOR shall be considered "Late" to a call if any time elapses past the response time. Three (3) "Late" responses in any given thirty- (30) day period may be considered a breach of contract and may be subject to termination.
14. If the CONTRACTOR arrives at a Sheriff's facility and is unable to locate the requesting law enforcement officer within fifteen- (15) minutes, contractor shall contact Sheriff's Dispatch via the law enforcement phone number for updated arrival or location information, prior to leaving the site.
15. CONTRACTOR shall be considered "No Show" to a call if no arrival forty-five (45) minutes after the initial call from Sheriff's Dispatch. Two (2) "No Shows" within a one (1) year period may be considered as breach of contract and may be subject to termination.
16. Language will be included that allows a penalty for delayed responses, such as, if the response takes longer than one- (1) hour, COUNTY will have to pay one half the regular fee. The collection of blood and urine samples is time sensitive. Generally, the sooner the COUNTY obtains the samples the greater their value to the case.
17. The CONTRACTOR will maintain a twenty-four hours, seven day a week toll free contact number for call-outs. The service must provide a confirmation that a staff member is responding to the requested location and an estimated time of arrival.
18. The Sheriff's Department reserves the right to reject staff that the COUNTY determines would jeopardize the integrity of an investigation, be an ethical conflict, or present facility security or an officer safety risk.
19. The Sheriff's Department reserves the right to reject staff that the COUNTY determines would jeopardize the integrity of an investigation, be an ethical conflict, or present facility security or an officer safety risk.
20. The CONTRACTOR'S responding staff must notify the case agent if the subject of the service is known to, or related to, the staff member before service is rendered.
21. The Sheriff's Department is not to be charged for a second response if the case agent rejects the staff member originally called out.
22. CONTRACTOR'S staff and employees will submit to and pass a Level 2 Security Check, prior to being allowed to provide the contracted service. The Sheriffs Personnel Bureau will conduct these security checks at no cost to the CONTRACTOR.

- 23.** Level 2 Security Check may include the following or other information as requested by Sheriff's Personnel:
- a. Photograph
 - b. Completion of a background questionnaire
 - c. Fingerprint submission to the FBI, and DOJ for a criminal history check
 - d. Driver's license check
 - c. Wanted persons check
 - e. Local law enforcement contacts
 - f. Presentation of driver's license, SSN card, DD214, Selective Service registration, marriage license, divorce decree, birth certificate, financial information, and such

Failure to pass a background check is sufficient reason to reject the services of a staff member.

- 24.** The CONTRACTOR will provide photo identification for each staff member. Staff members will wear photo identification at all times when at a Sheriff's facility or remote site. The identification shall be updated yearly and display the following information:
- a. Name of staff member
 - b. Title (e.g. Registered Nurse, Licensed Vocational Nurse, phlebotomist and technician).
 - c. CONTRACTOR'S business name, address, and twenty-four (24) hour contact phone number.
- 25.** The CONTRACTOR is responsible for providing all necessary supplies to appropriately collect and package items of evidence.
- 26.** Fees limited to the maximum allowed by state law for services reimbursed by the state, such as DNA collections pursuant to 296 Penal Code.
- 27.** Sexual Assault Suspect Examinations will be conducted in accordance with the California Office of Criminal Justice Planning (OCJP) guidelines, using sex kits available from the California Department of Justice obtained by the CONTRACTOR. Documentation of the examination and the specimens will be completed using the OCJP 950 form (Forensic Medical Report: Sexual Assault Suspect Examination) or any subsequent form approved by the California Department of Justice for such use. The original of the form will be provided to the investigating officer. A copy will be submitted with the sex kit and turned over to the investigating officer for appropriate disposition, and the person conducting the examination will retain a copy.

**EXHIBIT B
PAYMENT PROVISIONS**

DUI Blood Draw (Registered Nurse)	\$40.00	Non DUI Blood Draw (Registered Nurse)	\$40.00
Urine collection (Registered Nurse)	\$40.00	Suspect Sex Kit (Registered Nurse)	\$75.00
Dry Run (Registered Nurse)	\$20.00	Court Time (Registered Nurse)	NC
DUI Blood Draw (Certified Phlebotomist)	\$40.00	Non DUI Blood Draw (Certified Phlebotomist)	\$40.00
Urine collection (Certified Phlebotomist)	\$40.00	Suspect Sex Kit (Certified Phlebotomist)	\$75.00
Dry Run (Certified Phlebotomist)	\$20.00	Court Time (Certified Phlebotomist)	NC
DUI Blood Draw (Licensed Vocational Nurse)	\$40.00	Non DUI Blood Draw (Licensed Vocational Nurse)	\$40.00
Urine collection (Licensed Vocational Nurse)	\$40.00	Suspect Sex Kit (Licensed Vocational Nurse)	\$75.00
Dry Run (Licensed Vocational Nurse)	\$20.00	Court Time (Licensed Vocational Nurse)	NC
DUI Blood Draw (Paramedic)	\$40.00	Non DUI Blood Draw (Paramedic)	\$40.00
Urine collection (Paramedic)	\$40.00	Suspect Sex Kit (Paramedic)	\$75.00
Dry Run	\$20.00	Court Time (Paramedic)	NC

Attachment 1
HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and [American Forensic Nurses]

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **BLOOD DRAW/BIOLOGICAL EVIDENCE/URINE COLLECTION SERVICES** (the "Underlying Agreement") between the County of Riverside ("County") and [American Forensic Nurses] "Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of County, is a business associate as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing services on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
 - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this definition, "compromises the security or privacy of PHI" means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:
 - (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
 - (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
 - (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
 - B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
 - C. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
 - D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
 - E. "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, and shall have the meaning given such term in 42 USC §17921(5).
 - F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
 - G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
 - H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
 - I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
 - J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
 - K. "Required by law" has the meaning given such term in 45 CFR §164.103.
 - L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
 - M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
 - N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

2. Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
- (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
 - (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
 - (a) The disclosure is required by law; or,
 - (b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
 - (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
 - (3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
 - (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. Prohibited Uses and Disclosures.

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §§17935 and 17936. Contractor agrees:
- (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
 - (2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to

42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,

- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. Obligations of County.

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

5. Obligations of Contractor. In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.
- F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
- G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
- H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the

disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.

- J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
- K. Use appropriate administrative, technical, and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
- L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.

6. **Access to PHI, Amendment, and Disclosure Accounting.** Contractor agrees to:

- A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).
- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
 - (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - (3) Make available for County information required by this section for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.

7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:

- A. Implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 45 CFR §§164.308, 164.310, and 164.312;
- B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
- C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
- E. Ensure compliance by Contractor's workforce;
- F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;

- G. Report to County any security incident of which Contractor becomes aware; and,
- H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including, but not limited to HITECH.

8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.

A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

(1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).

(2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:

- (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
- (b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
- (c) A description of the types of unsecured PHI 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;
- (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
- (f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.

C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.

D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.

E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be

construed to limit or diminish Contractor's obligations to indemnify, defend, and hold harmless County under Section 9 of this Addendum.

- F. **Documentation.** Pursuant to 45 CFR §§ 164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach.

9. **Hold Harmless/Indemnification.**

- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

- (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- (2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. **Effect of Termination.**

- (1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. **General Provisions.**

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule, and/or Security Rule means the section(s) as in effect or as amended.

- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
- (1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA, and HITECH.
 - (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA, and HITECH generally.
- G. **Notices to County.** All notifications required to be given by Contractor pursuant to the terms of this Addendum shall be in writing and delivered to the County by either first class United States mail with postage prepaid, registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability at the address listed below, or at such other address as County may hereafter designate. All notices provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

Name:
Title:
Address: