

**AGREEMENT**  
WestCare California, Inc.

**I. INTRODUCTION**

**THIS AGREEMENT** is entered into as of \_\_\_\_\_, 2013 between the COUNTY OF TULARE, referred to as COUNTY, and WestCare California, Inc. a California non-profit foundation, referred to as CONTRACTOR, with reference to the following:

**II. RECITALS**

**A.** The Public Safety Realignment Act (Assembly Bill 109), signed into law on April 4, 2011, transferred responsibility for supervising specified lower level inmates and parolees from the California Department of Corrections and Rehabilitation to the counties.

**B.** In an effort to address the provisions of Assembly Bill 109 and the influx of 1) Low-Level State Prison Post-release offenders (PRCS); 2) Low Level Non-Violent, Non-Serious and Non-Registerable Sex Offenders (N3's); 3) existing violators of parole who will not be returned to State Prison; 4) any offender who are placed on felony probation, COUNTY needs to enter into contracts and linkages with community-based services for placement, treatment, counseling, employment, education and training.

**C.** CONTRACTOR operates one (1) residential and outpatient facility in Fresno, CA, with a major goal to provide quality case management, treatment, training, supervision and in-house services to residents. Programs provided by CONTRACTOR are designed to reduce the likelihood of return to crime, or recidivism, provide job development, substance abuse treatment, family reunification, finance management, literacy training and correctional counseling.

**ACCORDINGLY, IT IS AGREED:**

**III. SPECIFIC TERMS**

**1. TERM:** This Agreement shall become effective as of July 1, 2013 and shall expire at 11:59 PM on June 30, 2014 unless otherwise terminated as provided in this Agreement.

**2. SERVICES TO BE PERFORMED:** See attached **EXHIBIT A**.

**3. PAYMENT FOR SERVICES.** See attached **EXHIBIT B**. The maximum amount not to exceed **\$250,000**.

#### **IV. GENERAL TERMS**

##### **4. INDEPENDENT CONTRACTOR STATUS:**

(a) This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

(b) CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
3. Withhold state or federal income tax from payments to CONTRACTOR.
4. Make disability insurance contributions on behalf of CONTRACTOR.
5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

(c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

**5. COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

**6. GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

**7. RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare

County to Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement. All records required to be retained may be maintained in electronic format at the discretion of CONTRACTOR.

**8. CONFLICT OF INTEREST:**

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influence any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

**9. INSURANCE:** Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the submitting department evidence of required insurance as set forth in **EXHIBIT C** attached. Insurance policies shall not be used to limit CONTRACTOR'S liability or limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

**10. INDEMNIFICATION:** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. The indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

**11. TERMINATION:**

(a) Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to COUNTY'S retention of CONTRACTOR, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will the COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, the CONTRACTOR must pay the difference to the COUNTY. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR'S services have been terminated by the COUNTY, said termination will not affect any rights of the COUNTY to recover damages against the CONTRACTOR.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

**12. LOSS OF FUNDING:** It is understood and agreed that if funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

**13. FORM DE-542:** If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR'S full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE-542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

**14. NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**COUNTY:**

Marichu A. Baker, Administrative Services Officer III  
Tulare County Probation Department  
221 S Mooney Blvd., RM. 206  
Visalia, California 93291  
(559) 713-2750

**CONTRACTOR:**

Shawn Jenkins  
WestCare California, Inc.  
P.O. Box 12107  
Fresno, CA 93776  
(559) 251-4800 office  
(559) 974-2919 cell

With copy to:

WestCare Foundation Inc.  
Attn: Office of General Council  
900 Grier Dr., Las Vegas, NV 89119

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

**15. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees. No part of this Agreement may be assigned or subcontracted by either party hereto without prior written consent.

**16. DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

**17. FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purpose of this Agreement.

**18. CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

**19. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

**20. NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

**21. WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

**22. EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

**23. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered

null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

**24. ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without written consent of both parties.

**25. ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the CONTRACTOR and the COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY pursuant to this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude COUNTY from terminating this Agreement with or without cause as provided for herein.

**26. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):**

- (A) CONTRACTOR shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate exhibit, as set forth in EXHIBIT D attached.
- (B) At termination of this Agreement, CONTRACTOR shall, if feasible, return or destroy all protected health information received from, or created or received by, CONTRACTOR on behalf of COUNTY that CONTRACTOR still maintains in any form, and retain no copies of such information; or if such return or destruction is not feasible, extend the protection of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information feasible.
- (C) COUNTY may immediately terminate this Agreement if COUNTY determines that CONTRACTOR has violated a material term of this provision.

**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**COUNTY OF TULARE**

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By: \_\_\_\_\_  
Deputy Clerk

**CONTRACTOR**

Date: 9/17/13 BY: Shawn A. Jenkins  
TITLE SR. V.P.

Date: 9/17/13 BY: Tim Stiles  
TITLE CFO

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract

Approved as to Form  
County Counsel

By: [Signature]  
Deputy 120131524

Date: 09/18/13

## EXHIBIT A

# SCOPE OF WORK

WestCare California, Inc.  
P.O. Box 12107  
Fresno, CA 93776  
(559) 251-4800

WestCare California, Inc., a national non-profit foundation, was created in 1973 to provide community-based substance abuse treatment to a distinct population that had little resources for such treatment. WestCare today provides a broad continuum of behavioral and mental health services and wide spectrum of health and human services in both residential and outpatient environments in 11 states and 2 territories WestCare California, In which is part of the WestCare family, operates facilities conveniently located in the Central Valley to serve local clients. Services are available to adults, children, adolescents and families. WestCare specializes in helping people traditionally considered difficult to treat, such as those who are indigent, have multiple disorders or are involved with the criminal justice system transform their lives into becoming productive members of society free of crime and substance abuse.

### WESTCARE CALIFORNIA SERVICES PROVIDED

Short-term and/or Long-Term Residential Programs are available to both men and women, with or without children, depending on individual needs. The following services will be provided at the WestCare California, Inc. facility to clients of the Tulare County Probation Department, excluding those who are dually diagnosed with a serious mental illness:

- Substance Abuse and Addiction Treatment
- Domestic Violence Education & Prevention
- Education and Prevention
- Family Unification & Solutions
- Vocational & Computer Skills Development
- Community-based Support Services
- Money Management
- Parenting Groups
- Life Skills
- Assessment & Referral Services
- Food and Shelter
- Mental & Physical Health Programs
- Holistic Health & Wellness
- Individual & Group Counseling
- Transportation / Recreation
- Anger Management
- Stress Management
- Childcare
- Smoking Cessation
- Pregnancy Care

### OUTPATIENT SERVICES

Outpatient substance abuse and/or correctional treatment services for individual and group counseling (minimum of 3 participants per group) will be available.

Psychotherapy services provided by a licensed mental health clinician at an individual hourly rate and a group rate (minimum of 3 participants per group) will be available

A Day Reporting service may be developed upon request and mutual agreement between the Tulare County Probation Department and WestCare. A Day Reporting program would provide intensive substance-abuse treatment and counseling services. No residential services or food provided.

### CONTACT INFORMATION

Shawn A. Jenkins, Regional Vice President  
WestCare California, Inc.  
Post Office Box 12107  
Fresno, CA 93776  
PH: (559) 251-4800 / (559) 974-2919 cell  
Shawn.Jenkins@westcare.com

## **EXHIBIT B**

### **PAYMENT FOR SERVICES**

**WestCare California, Inc.  
P.O. Box 12107  
Fresno, CA 93776  
(559) 251-4800**

It is mutually agreed that the COUNTY shall pay CONTRACTOR no more than a maximum of \$250,000 for all services rendered under this agreement.

WestCare will charge the Tulare County Probation Department \$65 per bed per day for residential, men and women, without children, treatment and training services. This cost will include shelter, food, and an array of services as delineated in Exhibit A.

WestCare will charge the Tulare County Probation Department \$85 per bed per day for residential, men and women, with children, treatment and training services. This cost will include shelter, food, and an array of services as delineated in Exhibit A.

WestCare will charge the Tulare County Probation Department \$70 per bed per day for residential, men and women, detoxification treatment and training services. This cost will include shelter, food, and an array of services as delineated in Exhibit A.

Transitional living services (bed and meals) for homeless offenders will be provided at a cost of \$35 per day. Transitional living services do not include treatment services and are only available in Fresno at this time.

Full mental health assessments provided by a licensed psychiatrist will be available at a cost of \$200 per hour.

Psychotherapy services, including assessment, provided by a licensed mental health clinician will be billed at an hourly rate of \$123.60 for individual and \$123.60 per hour for mental health group sessions (minimum 3 individuals per group). Psychotherapy services are only offered in Fresno at this time.

Outpatient substance abuse and/or correctional treatment services are available at an hourly rate of \$67.53 for individual and \$28.69 per hour for group sessions (minimum 3 individuals per group). Outpatient services are currently only offered in Fresno.

Urine drug test collection services are available at a cost of \$13 per test (for instant test). If lab conformations are required on all positive tests the total will be \$20 which included the instant test plus lab conformation. Testing for Synthetic Cannabinoids will add \$30 to each test.

Available services do not imply a requirement of participation by clients of the Tulare County Probation Department, and are listed for informational purposes only.

Payment for actual services provided shall be billed and paid monthly in accordance with the standard County billing/payment cycle. Billing statements shall be sent to:

Tulare County Probation Department  
221 South Mooney Boulevard, Room 206  
Visalia, CA 93291  
ATTN: Marichu Baker, Administrative Services Officer III

**Exhibit C**  
**PROFESSIONAL SERVICES CONTRACTS**  
**INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

**A. Minimum Scope & Limits of Insurance**

- 1 Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
- 2 Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

**B. Specific Provisions of the Certificate**

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
  - a *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR*
  - b *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it*
  - c *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.
  - a *Waiver of Subrogation The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the*

*contractor, its employees, agents and subcontractors CONTRACTOR waives all rights against the County and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-.VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

F. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

**Exhibit "D"**  
**HIPAA REQUIREMENT**

The Health insurance Portability and Accountability Act of 1996 (HIPAA)

- A. Definitions: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.
1. *Business Associate.* "Business Associate" shall mean CONTRACTOR.
  2. *Covered Entity.* "Covered Entity" shall mean COUNTY.
  3. *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
  4. *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
  5. *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
  6. *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
  7. *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- B. Obligations and Activities of CONTRACTOR
1. CONTRACTOR agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
  2. CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
  3. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information by CONTRACTOR in violation of the requirements of this Agreement.
  4. CONTRACTOR agrees to report to COUNTY any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
  5. CONTRACTOR agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by CONTRACTOR on behalf of COUNTY agrees to the same restrictions and conditions that apply through this Agreement to CONTRACTOR with respect to such information. CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner requested by COUNTY, to Protected Health Information in a Designated Record Set, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524

6. CONTRACTOR agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner requested by COUNTY
7. CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by CONTRACTOR on behalf of, COUNTY to the COUNTY, in a time and manner requested by COUNTY for purposes of determining CONTRACTOR'S and/or COUNTY'S compliance with the Privacy Rule.
8. CONTRACTOR agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR 164.528
9. CONTRACTOR shall provide to COUNTY or an individual, in time and manner designated by COUNTY, information collected in accordance with Title 45, CFR, Section 164.528, to permit the Department to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528

C. General Use and Disclosure Provisions: Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, COUNTY, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by COUNTY or the minimum necessary policies and procedures of the COUNTY.

D. Specific Use and Disclosure

1. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.
2. Except as otherwise limited in this Agreement, CONTRACTOR may disclose Protected Health Information for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information to provide Data Aggregation services to COUNTY as permitted by 42 CFR 164.504(e)(2)(i)(B)

4. CONTRACTOR may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with § 164.502(j)(1)

E. Obligations of COUNTY

1. COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR'S use or disclosure of Protected Health Information.
2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect CONTRACTOR'S use or disclosure of Protected Health Information
3. COUNTY shall notify CONTRACTOR of any restrictions to the use or disclosure of Protected Health Information that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of Protected Health Information.

- F. Permissible Requests by COUNTY: Except as otherwise provided herein, COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by COUNTY

G. Miscellaneous

1. *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
2. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for COUNTY to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub L. No. 104-191.
3. *Survival.* The respective rights and obligations of CONTRACTOR under this Exhibit shall survive the termination of this Agreement.
4. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule.