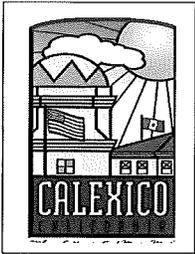


**AGENDA
ITEM**

11



AGENDA STAFF REPORT

DATE: June 19, 2019

TO: Mayor and City Council

APPROVED BY: David B. Dale, City Manager *DD*

PREPARED BY: David B. Dale, City Manager

SUBJECT: Approval of Memorandum of Agreement for Sexual Assault Response (SART) Services between Pioneers Memorial Healthcare District and the City of Calexico

=====

Recommendation:

Approve two-year Memorandum of Agreement by and between the Pioneers Memorial Healthcare District and the City of Calexico for SART services.

Background:

In October 1992, the County Board of Supervisors designated Pioneers Memorial Healthcare District as the local SART hospital for Imperial County. Pioneers Memorial Healthcare District has an established program to provide aid to local law enforcement agencies in investigating and assisting in prosecution of rape and other sexually oriented crimes known as the adult Sexual Assault Response Team program (SART).

Discussion & Analysis:

Pioneers Memorial Healthcare District and the City of Calexico are part of a multi-jurisdictional cooperative effort involving local area hospitals, local law enforcement jurisdictions, advocate agencies and other public agencies concerned with assisting victims of sexual assault.

Fiscal Impact:

None.

Coordinated With:

None.

Attachment(s):

1. Memorandum of Agreement for SART services.



June 3, 2019

Mr. David B. Dale
City Manager
City of Calexico
608 Heber Avenue
Calexico, CA 92231

RE: **Memorandum of Agreement for Sexual Assault Response Team (SART)
Services**

Dear Mr. Dale,

In October 1992, the County Board of Supervisors designated Pioneers Memorial Healthcare District as the local SART hospital for Imperial County. It remains our privilege as we continue to maintain the designation and provide the service. At PMHD, our primary goals include delivering the highest quality care while meeting the needs of our community.

Significantly Mr. Dale, I've enclosed two (2) partially executed sets of the Memorandum of Agreements for your perusal. It would be my pleasure to discuss these further at your convenience, of course, should you desire. I am also available to discuss additional redlining. If you feel the current MOA suits your needs, I encourage you to have each set signed, retaining one (1) original for your file and returning one (1) fully executed original to the following address:

Pioneers Memorial Healthcare District
Attn: Elizabeth Moreno
207 West Legion Road
Brawley, CA 92227

Feel free to reach out to me directly and I'll gladly swing by to retrieve the original myself and perhaps take a few moments of your time for a quick introduction.

I look forward to collaborating with you throughout this process.

Kindly,



Elizabeth Moreno
Executive Assistant to CNO
Nursing Administration

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
PIONEERS MEMORIAL HEALTHCARE DISTRICT
And
CITY OF CALEXICO

This Agreement made the 1st day of July, 2019, by and between Pioneers Memorial Healthcare District ("Hospital") and City of Calexico ("Facility").

RECITALS

Whereas Hospital owns and operates an acute care hospital within the County of Imperial, State of California and provides emergency care 24 hours per day; and

Whereas Hospital has established a program to provide aid to local law enforcement agencies in investigating and assisting in the prosecution of rape and other sexually oriented crimes known as the adult Sexual Assault Response Team Program (SART). The program is operated out of Hospital's adult SART Department ("Department").

Whereas the State of California and Facility have a responsibility to assure that sexual assault evidence is gathered according to established medical legal standards; and

Whereas Hospital and Facility are committed to providing the highest quality of care to victims of sexual assault; and

Whereas Hospital and Facility are part of a multi-jurisdictional cooperative effort involving local area hospitals, local law enforcement jurisdictions, advocate agencies, and other public agencies concerned with assisting victims of sexual assault; and

Whereas Hospital and Facility desire to ensure an organized, effective team response to cases of sexual assault in Facility through a Sexual Assault Response Team ("SART"), with the use of Sexual Assault Nurse Examiners ("SANE").

AGREEMENTS

THEREFORE, Hospital and Facility, in consideration of the covenants, stipulations, and terms expressed herein agree as follows:

HOSPITAL'S OBLIGATIONS

1. Hospital agrees to provide and maintain a full-time single use SART examination room.

2. Hospital agrees that the SART examination room shall be separate from Hospital's Emergency Room.
3. Hospital agrees to provide SART services according to the State of California Medical Protocol for the Examination of Sexual Assault Victims.
4. Hospital is responsible for ensuring that the service of a SANE is always on call.
5. Hospital is responsible for supervision of SART medical personnel.
6. Hospital has developed and shall maintain in effect policies and procedures for SANE examinations conducted in accordance with the California Emergency Management Agency (CalEMA), formerly OES (and even more formerly OCJP), protocols and relevant standardized requirements.
7. Hospital agrees to provide access to SART examination room for designated non-medical SART members. This designation shall be provided to Hospital by adult SART Department personnel).
8. Hospital will bear the cost of malpractice and liability insurance for its employees and its SANE.
9. Hospital agrees to bear its own costs related to the SART program.

FEES

10. Hospital agrees to charge and Facility agrees to pay fees according to attached Fee Schedule (Attachment A).
11. Hospital's fee may be adjusted to reflect Consumer Price Index increases in the cost of living. Such fee adjustment will not occur before July 1, 2020 and shall occur annually thereafter, during the Term.

FACILITY'S OBLIGATIONS

12. Facility shall continue its designation of Hospital as the SART hospital for Facility of Calexico.
13. Facility agrees to ensure that on-going law enforcement training is provided to encourage all law enforcement agencies to exclusively use SART examination services at Hospital.

TERM AND TERMINATION

- 14. The term of this Agreement is two (2) years from the date of execution to **June 30, 2021.**
- 15. Either party hereto may terminate this Agreement without cause by giving ninety (90) days written notice to the other party.

GENERAL PROVISIONS

- 16. This Agreement supersedes any and all other agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement, and no other agreement, statement, or promise relating to the specific subject matter of this Agreement which is not contained herein shall be neither valid or binding.
- 17. Any amendment, modification or alteration to this Agreement must be executed in writing by both parties to the Agreement.

IN WITNESS WHEREOF, Hospital and Facility have caused this Agreement to be executed as of the date set forth above.

Hospital

Entity/Agency

Pioneers Memorial Healthcare District
207 West Legion Road
Brawley, CA 92227-7780

City of Calexico
608 Heber Avenue
Calexico, CA 92231

By: Lawrence Lewis
Signature

By: _____
Signature

Name: Lawrence Lewis

Name: David Dale

Title: Chief Executive Officer

Title: CITY Manager

FEE SCHEDULE

ITEM

FEE

Victim Sexual Assault Exam

\$2250

Suspect Sexual Assault Exam

\$1150

SART – Response Fee/No Exam

\$300

BUSINESS ASSOCIATE AGREEMENT

Preamble

In order to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 42 U.S.C. §§ 1320d through 1320d-8) as amended, (“HIPAA”), Title XIII of the American Recovery and Reinvestment Act of 2009 (20 Public Law 111-5, 123 Stat. 115) (“ARRA”), which is the Health Information Technology for Economic and Clinical Health Act, including without limitation 42 U.S.C.A. § 300jj-17 as amended (“HITECH”), and its implementing regulations, the Privacy, Security, Breach Notification, and Enforcement Rules at 45 Code of Federal Regulations (“C.F.R.”) Parts 160 164 as amended (“HIPAA Rules”), PIONEERS MEMORIAL HEALTHCARE DISTRICT, a local health care district formed under California Health & Safety Code §§ 32000 *et. seq.* (“Covered Entity”) and CITY OF CALEXICO (“Business Associate”), enter into this Business Associate Agreement (“BA Agreement”), effective as of the date identified on the signature page (“Effective Date”) and agree as set forth below. Business Associate and Covered Entity may be referred to as “Party” or “Parties” in this BA Agreement.

1. DEFINITIONS

- a. Administrative Safeguards: “Administrative Safeguards” shall mean administrative actions and policies and procedures used to manage the selection, development, implementation, and maintenance of security measures to protect Electronic Protected Health Information and to manage the conduct of the Business Associate’s workforce in relation to the protection of that information, as is more particularly set forth in 45 C.F.R. § 164.308 as amended.
- b. Breach: “Breach” shall mean the acquisition, access, use, or disclosure of Protected Health Information not permitted by HIPAA Rules or which compromises the security or privacy of Protected Health Information as defined in 45 C.F.R. § 164.402 as amended.
- c. Business Associate: Business Associate is defined by law as a person or entity that performs functions on behalf of the Covered Entity which meet the definitions of “Business Associate Activities” in 45 C.F.R. § 160.103 as amended. In order for Business Associate to perform its obligations, Covered Entity must disclose certain Protected Health Information that is subject to protection under HIPAA Rules. For purposes of this BA Agreement, “Business Associate” is identified in the Preamble.
- d. Catch-all Definition: Terms used, but not otherwise defined, in this BA Agreement shall have the same meaning as those terms in HIPAA, HIPAA Rules, ARRA, HITECH, and applicable laws and regulations, as amended.
- e. Covered Entity: Covered Entity is defined by law as persons, organizations, and agencies that meet the definition of a “covered entity” in 45 C.F.R. § 160.103 as amended. For purposes of this BA Agreement, “Covered Entity” is identified in the Preamble.
- f. Designated Record Set: “Designated Record Set” shall mean a group of records maintained by or for the Covered Entity that is the medical records and billing records about Individuals maintained by or for the Covered Entity or used or, in whole or in part, by or for the Covered Entity to make decisions about Individuals, as defined in 45 C.F.R. § 164.501 as amended.

g. Electronic Protected Health Information: “Electronic Protected Health Information” shall mean Protected Health Information that is transmitted or maintained in electronic media or format.

h. Encryption: “Encrypt” or “Encryption” shall mean the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, as defined in 45 C.F.R. § 164.304 as amended.

i. Individual: “Individual” shall mean “individual” as defined in 45 C.F.R. § 160.103 as amended and shall include a person who qualifies as a Personal Representative in accordance with 45 C.F.R. § 164.502(g) as amended.

j. Physical Safeguards: “Physical Safeguards” shall mean the physical measures, policies and procedures used to protect Business Associate’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion, as is more particularly set forth in 45 C.F.R. § 164.310 as amended.

k. Privacy Rule: “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 C.F.R. parts 160 and 164 as amended.

l. Protected Health Information: Protected Health Information (“PHI”) shall mean Individually Identifiable Health Information that is (i) transmitted by electronic media; (ii) maintained in any medium constituting electronic media, or (iii) transmitted or maintained in any other form or medium. For example, PHI includes information contained in a patient’s medical and billing records, as defined in 45 C.F.R. § 160.103 as amended.

m. Required by Law: “Required by Law” shall have the same meaning as the term “required by law” defined in 45 C.F.R. § 164.103 as amended.

n. Secretary: “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.

o. Security Incident: “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system containing Covered Entity’s PHI, as defined into 45 C.F.R. § 164.304 as amended.

p. Security Rule: “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information in 45 C.F.R. parts 160 and 164 as amended.

q. Technical Safeguards: “Technical Safeguards” shall mean the technology and the policy and procedures for its use that protect Electronic Protected Health Information and control access to it, as is more particularly set forth in 45 C.F.R. § 164.312 as amended.

r. Underlying Contract: “Underlying Contract” shall mean the contract for services (including where applicable, related products) between Covered Entity and Business Associate that constitutes the main agreement between the Parties to which this BA Agreement is attached.

s. Unsecured Protected Health Information: “Unsecured Protected Health Information” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary, as defined in 45 C.F.R. § 164.402 as amended.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Business Associate shall not use or disclose PHI other than as permitted in this BA Agreement or as Required by Law.

b. Business Associate shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI other than as provided for in this BA Agreement and to comply with the Security Rule with respect to Electronic Protected Health Information.

c. Business Associate shall mitigate, to the extent practicable, and will act in good faith with Covered Entity, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BA Agreement.

d. Business Associate shall report in writing, in accordance with Section 3(d) (1)-(4) of this BA Agreement, promptly and no later than three (3) business days to the Covered Entity any use or disclosure of PHI not provided for by this BA Agreement of which it becomes aware in accordance with 45 CFR § 164.504(e)(2)(ii)(C) as amended, including Breaches of Unsecured Protected Health Information as required at 45 CFR § 164.410 as amended, and any Security Incident of which it becomes aware in accordance with 45 CFR § 164.314(a)(2)(i)(C) as amended

e. In accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(2), as amended, Business Associate shall ensure that any agent, including any subcontractors, that create, receive, maintain, or transmit PHI on behalf of Business Associate, agree to the same restrictions and conditions, in writing, that apply through this BA Agreement to Business Associate with respect to such PHI. Business Associate ensures that any subcontractors, including any agents of the Business Associate that create, receive, maintain, or transmit Electronic Protected Health Information on behalf of the Business Associate agree, in writing, to comply with the Security Rule.

f. Business Associate shall make its internal practices, books, and records including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a prompt and timely manner as designated by the Secretary, for purposes of determining Covered Entity's compliance and Business Associate's compliance with HIPAA Rules.

g. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an Accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 as amended.

h. Business Associate and its agents or subcontractors shall, within thirty (30) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.528 as amended, and its obligations under HITECH, including but not limited to 42 U.S.C. § 17935(c) as amended, as determined by Covered Entity. The provisions of this Subparagraph 2.h. shall survive the termination of this BA Agreement.

i. Business Associate shall make available PHI maintained by Business Associate or its agents or subcontractors in a Designated Record Set to the Covered Entity for inspection and copying within fifteen (15) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.524 as amended.

If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under HITECH, including, but not limited to, 42 U.S.C. § 17935(e) and 45 CFR § 164.524, as amended.

j. Business Associate, or its agents or subcontractors, shall within thirty (30) days of receipt of a request from the Covered Entity or an individual for an amendment of PHI or a record about an individual contained in a Designated Record Set make any amendments of PHI that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 as amended.

k. Business Associate may provide data aggregation services, as requested by the Covered Entity, relating to the Health Care Operations of the Covered Entity; and

l. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under HIPAA Rules, comply with the requirements of HIPAA Rules that apply to the Covered Entity in the performance of such obligation(s).

m. Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 45 CFR §§ 164.501 and 164.508(a)(3), as amended.

n. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 45 CFR § 164.514(f) as amended.

o. Business Associate shall take all necessary steps, at the request of Covered Entity, to comply with requests by Individuals not to send PHI to a Health Plan in accordance with 45 CFR § 164.522(a) as amended.

3. HIPAA SECURITY RULE REQUIREMENTS

Business Associate shall:

a. secure all Electronic Protected Health Information through the use of encryption and/or destruction as provided by HITECH, the HITECH Omnibus Rule (published at 78 Fed. Reg. 5566 on Jan. 25, 2013 as amended) and HIPAA Rules, including without limitation 45 C.F.R. § 164.312. Business Associate shall so encrypt and/or destroy all Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity through all methods of data transmission, including secure email and on portable devices and removable media. If Business Associate elects destruction of PHI, then Business Associate shall comply with those provisions regarding destruction as contained in Section 8(e) of this BA Agreement. The Business Associate shall, however, encrypt Electronic Protected Health Information transmitted by the Business Associate to the Covered Entity over a public network.

b. implement and document, as set forth in 45 C.F.R. § 164.316 as amended, Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by 45 C.F.R. Part 164 as amended, and specifically, but not exclusively, including the following:

(1) Ensure the confidentiality, integrity, and availability of all Electronic Protected Health Information the Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity;

(2) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;

(3) Protect against any reasonably anticipated uses or disclosures of such information that are not permitted under this Agreement or required under HIPAA Rules; and

(4) Ensure compliance with these sections by its Workforce.

c. ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement and document reasonable and appropriate Administrative Safeguards, Physical Safeguards, and Technical Safeguards, in the same manner as such requirements apply to contracts or other arrangements between a Covered Entity and a Business Associate.

d. report to the Covered Entity, in writing, within three (3) business days of becoming aware of or discovering any: (i) Breach; (ii) Security Incident; (iii) incident that involves an unauthorized acquisition, access, use or disclosure of PHI, even if Business Associate believes the incident will not rise to the level of a Breach; (iv) use or disclosure of PHI not permitted by this BA Agreement by the Business Associate, its contractors and agents. Creation of this report is necessary in order to comply with HIPAA Rules and specifically, 45 C.F.R. § 164.410 beginning as of its effective date of 45 C.F.R. Part 164. The content of such a written report of the Business Associate to the Covered Entity shall include, without limitation:

(1) A brief description of what happened, including date of the Breach or Security Incident(s) or other inappropriate or impermissible or unlawful use or disclosure of PHI, if known; and

(2) A description of the types of PHI that were involved (e.g. SSN, name, DOB, home address, account number or disability code).

(3) The contact information for the individuals who were or who may have been affected by the Breach (e.g., first and last name, mailing address, street address, phone number, email address)

(4) A brief description of what the Business Associate has done or is doing to investigate the Breach and to mitigate harm to the individuals affected by the Breach. Business Associate shall pay the actual, reasonable costs of Covered Entity to provide required notifications. Business Associate shall also pay the costs of conducting an investigation of any incident required to be reported under this Section 3(d).

e. assist the Covered Entity and act in good faith and to assist, and mitigate potential or actual harms or losses including but not limited to any actual monetary costs due to the Business Associate or its agent(s) or contractor(s) fault or liability and to assist and protect PHI, if appropriate, and to further protect any known suspected or actual Breaches, Security Incidents, or known inappropriate or unlawful use or disclosure of PHI;

f. make its policies and procedures, and documentation required by Section 3 of this Agreement relating to such safeguards, available to the Secretary and to the Covered Entity for purposes of determining the Business Associate's compliance with Section 3 of this BA Agreement and with the Privacy Rule in general; and

g. authorize termination of the relationship with Covered Entity if Covered Entity notifies the Business Associate of a pattern of an activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligation under this

Agreement and the Business Associate has failed to cure the breach or end the violation in accordance with Section 8(d) of this BA Agreement.

4. HITECH PROVISIONS

a. Without limiting any uses or disclosures expressly permitted in the BA Agreement, Business Associate shall not sell, or receive remuneration for, either directly or indirectly, PHI created or received for or from Covered Entity or use or disclose PHI for purposes of marketing or fundraising, as defined and proscribed in HIPAA Rules.

b. Effective upon the compliance date applicable to the Covered Entity, Business Associate shall record all disclosures by Business Associate of PHI required to be recorded by regulations promulgated by the Secretary pursuant to ARRA with respect to the Accounting obligation.

c. Business Associate shall limit its uses and disclosures of, and requests for, PHI (i) when practical, to the information making up a Limited Data Set, and (ii) in all other cases subject to the requirements of 45 C.F.R. § 164.502(b) as amended, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

d. In the event Business Associate breaches the BA Agreement and termination of the Service Agreement(s) between the Parties is not feasible, the Business Associate shall report the breach to the Covered Entity and to the Secretary, if applicable, consistent with 45 C.F.R. § 164.504(e)(1)(i) as amended and HIPAA Rules.

e. To the extent Business Associate is acting as a Business Associate of Covered Entity, Business Associate may be subject to the penalty provisions specified in § 13404 of ARRA as amended and HIPAA Rules.

f. Nothing in the BA Agreement shall be construed to create an agency relationship between the Parties.

5. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise limited in this BA Agreement and as necessary to perform the services set forth in the Underlying Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in this BA Agreement and as necessary to perform the services set forth in the Underlying Contract, provided that such use or disclosure would not violate HIPAA Rules if done by Covered Entity. Business Associate may use PHI (i) for the proper management and administration of the Business Associate, (ii) to carry out the legal responsibilities of the Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of the Covered Entity.

6. SPECIFIC USE AND DISCLOSURE PROVISIONS

Except as otherwise limited in this BA Agreement, Business Associate may use PHI for: (i) the proper management and administration of the Business Associate; (ii) to carry out the legal responsibilities of the Business Associate; (iii) as Required by Law; or (iv) for Data Aggregation purposes for the Health Care Operations of the Covered Entity. If Business Associate discloses PHI to a third-party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable

written assurances from such third-party that PHI will be held confidential as provided pursuant to this BA Agreement and only disclosed as Required by Law or for the purposes for which it was disclosed to such third-party, and (ii) a written agreement from such third-party to immediately notify Business Associate of any breaches of confidentiality of PHI, to the extent it has obtained knowledge of such breach.

7. OBLIGATIONS OF COVERED ENTITY

a. Covered Entity shall make available to Business Associate a copy of its Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520 as amended, as well as any changes to such notice.

b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to if such restriction affects Business Associate's permitted or required uses and disclosures in accordance with 45 C.F.R. § 164.522 as amended.

d. Covered Entity shall obtain any consent, authorization, or permission that may be required by HIPAA Rules or applicable state laws and/or regulations prior to furnishing Business Associate the Protected Health Information pertaining to the Individual.

8. TERM AND TERMINATION

a. Term: The Term of this BA Agreement shall be effective as of the Effective Date, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of Section 8 of this BA Agreement.

b. Material Breach by Business Associate: A breach by Business Associate of any provision of this BA Agreement, as determined by Covered Entity, shall constitute a material breach of the Underlying Contract and shall provide grounds for termination of the Underlying Contract, any provision in the Underlying Contract to the contrary notwithstanding, with or without an opportunity to cure the breach. If termination of the Underlying Contract is not feasible, Covered Entity will report the problem to the Secretary.

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c. Material Breach by Covered Entity: Pursuant to 42 U.S.C. § 17934(b) as amended, if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Underlying Contract or BA Agreement or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Underlying Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary.

d. Termination for Cause: Upon Covered Entity’s knowledge of a material breach of this BA Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BA Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, but not less than thirty (30) days. Covered Entity may, at its discretion, or require Business Associate to submit reports to demonstrate that the breach has been cured or the violation has ended.

e. Effect Upon Termination: Except as provided in paragraph (d) of Section 8 of this BA Agreement, upon termination of this BA Agreement, for any reason, Business Associate shall return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(J) and C.F.R. §164.504(e)(5), as amended, in any form that is received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. If Covered Entity elects destruction of PHI, then Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI. In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BA Agreement, particularly with respect to Sections 2 and 3 of this BA Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

9. MISCELLANEOUS

a. Regulatory References: A reference in this BA Agreement to a section in HIPAA Rules (e.g., Privacy Rule, HIPAA Security Rule, HITECH, and Notification in the case of Breach of Unsecured Protected Health Information Rule) means the section as in effect or as amended, and for which compliance is required.

b. Amendment:

(i) The Parties agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for Covered Entity and Business Associate in order to comply with the requirements of HIPAA Rules, HIPAA HITECH, applicable regulations, and other applicable laws.

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(ii) This BA Agreement may be amended only by the signed mutual written consent of the Parties. The Parties agree to negotiate in good faith any modification to this BA Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including without limitation regulations promulgated pursuant to HIPAA, HIPAA Rules, or HITECH, court decisions or relevant government publication and/or interpretive policy affecting the use or disclosure of PHI. Covered

Entity may terminate the Underlying Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Underlying Contract or BA Agreement when requested by Covered Entity pursuant to Section 9(b) or (ii) Business Associate does not enter into an amendment to the Underlying Contract or BA Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

c. Survival: The respective rights and obligations of Business Associate under Section 8(e) of this BA Agreement shall survive the termination of this BA Agreement until all PHI received from Covered Entity has been returned or destroyed.

d. Construction of Terms and Interpretation: The terms of this BA Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA, HIPAA Rules, HITECH Act, or any other applicable provisions of ARRA issued by the U. S. Department of Health and Human Services (“HHS”) or the Office for Civil Rights and the Center for Medicare and Medicaid Services at HHS and the U.S. Federal Trade Commission. Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, HIPAA Rules, HITECH, and applicable laws and regulations.

e. Contradictory Terms: Any provision of the Underlying Contract that is directly contradictory to one or more terms of this BA Agreement (“Contradictory Term”) shall be superseded by the terms of this BA Agreement as of the Effective Date of this BA Agreement: to the extent and only to the extent of any such Contradictory Term, solely for the purpose of the Covered Entity’s compliance with HIPAA, HIPAA Rules, HITECH, and applicable laws and regulations and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this BA Agreement. This BA Agreement and the Underlying Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, HITECH, and HIPAA Rules, including the Privacy Rule and the Security Rule. Except as specifically required to implement the purposes of this BA Agreement, all other terms of the Underlying Contract shall remain in force and effect.

f. Ownership of PHI: The PHI to which Business Associate, or any agent or contractor, or subcontractor of Business Associate has access under this BA Agreement shall be and remain the property of Covered Entity.

g. Notices: Any notice, demand, or communication required or permitted to be given by any provision of this BA Agreement shall be in writing and will be deemed to have been given when actually delivered (by whatever means) to an authorized agent of the Party designated to receive such notice, or if by an overnight-courier service, then the next business day after delivery, as long as an authorized signature is obtained, or on the fifth (5th) business day after the same is sent by certified United States mail, postage and charges prepaid, directed to the address(es) noted below, or to such other or additional address as any Party timely designates by written notice to the other Party.

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h. Severability: If any provision of this BA Agreement is rendered invalid or unenforceable by the decision of any court of competent jurisdiction, then any such invalid or unenforceable provision shall be severed from this BA Agreement, and all other provisions of this

BA Agreement shall remain in full force and effect if such can reasonably be done in conjunction with the original intent of this BA Agreement.

i. Assignment: No assignment of the rights or obligations of either Party under this BA Agreement shall be made without the express written consent of the other Party, which consent shall not be unreasonably withheld.

j. Successors and Assigns: This BA Agreement shall be binding upon, and shall inure to the benefit of, the Parties, their respective successors and permitted assignees.

k. Waiver of Breach: Waiver of breach of any provision of this BA Agreement shall not be deemed a waiver of any other breach of the same or different provision.

l. Indemnification; Limitation of Liability: To the maximum extent permitted by law, Business Associate shall indemnify, defend and hold harmless Covered Entity, its directors and employees from any and all liability, claim, lawsuit, injury, loss, expense or damage, including attorneys' and consultants' fees resulting from or relating to: **(i)** any negligent or fraudulent act or omission of Business Associate (including its employees, agents, delegates, representatives, or subcontractors); **(ii)** a violation of HIPAA by Business Associate (including its employees, agents, delegates, representatives, or subcontractors); **(iii)** a breach of this BA Agreement by Business Associate (including its employees, agents, delegates, representatives, or subcontractors); or **(iv)** or any other acts or omissions of Business Associate (including its employees, agents, delegates, representatives, or subcontractors) in connection with the representations, duties, and obligations of Business Associate under this BA Agreement. Any limitation of liability contained in the Underlying Contract shall not apply to the indemnification requirement of this provision. This provision, 9-l., shall survive the termination of the BA Agreement.

m. Assistance in Litigation: Business Associate shall make itself and any employees, agents, delegates, representatives, or subcontractors assisting Business Associate in the performance of its obligations under the Underlying Contract (or Addendum) available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise assist in the defense, in the event of litigation or administrative proceedings brought against Covered Entity, its directors, officers, agents, or employees based upon a claim of violation of HIPAA, HITECH, HIPAA Rules, including the Privacy Rule and the Security Rule, or other laws related to PHI security and privacy, except where Business Associate or its employee, agent, delegate, representative, or subcontractor is named as a party adverse to Covered Entity.

n. No Third-Party Beneficiaries: Nothing express or implied in the Underlying Contract or this BA Agreement is intended to confer, nor shall anything herein confer upon any person *other than* Covered Entity, Business Associate (and their respective successors or assigns), any rights, remedies, obligations or liabilities whatsoever. This provision, 9-n. shall survive the termination of the BA Agreement.

o. Headings: The headings or captions provided throughout this BA Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this BA Agreement.

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p. Governing Law, Jurisdiction, and Venue: These Terms and Conditions shall be governed by, construed and enforced in accordance with the laws of the **State of California** regardless of the choice-of-law rules of any jurisdiction. Each Party irrevocably agrees that the

courts of the **State of California** located in **Imperial County** shall have the sole and exclusive jurisdiction with respect to any action or proceeding at law or in equity arising out of or relating to these Terms and Conditions. Each Party hereby submits to the personal jurisdiction of, and venue in, such forum, and expressly waives any claim of lack of jurisdiction, improper venue, or that such venue constitutes an inconvenient forum. This provision, 9-p, shall survive the termination the BA Agreement.

q. HIPAA Compliance: Business Associate will comply with all current and future applicable provisions of HIPAA, HIPAA Rules, HITECH, to, and applicable laws and regulations.

r. Covered Entity's Name and Logo: Business Associate shall not use the Covered Entity's name, trade-name, trade-mark, service marks, brands, or logos except upon the prior written consent of the Covered Entity by a duly authorized signatory.

s. Entire Agreement of the Parties: With the exception of the Underlying Contract, this BA Agreement supersedes any and all prior and contemporaneous business associate agreements or addenda between the Parties, and constitutes the final and entire agreement between the Parties hereto with respect to the subject matter hereof. With the exception of the Underlying Contract, no other agreement, statement, or promise, with respect to the subject matter of this BA Agreement, not contained in this BA Agreement, shall be valid or binding.

t. Identity Theft Program Compliance: To the extent that Covered Entity is required to comply with the final rule entitled "Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003," as promulgated and enforced by the Federal Trade Commission (16 C.F.R. Part 681 as amended ; "Red Flags Rule"), and to the extent that Business Associate is performing an activity in connection with one or more "covered accounts," as that term is defined in the Red Flags Rule, pursuant to the Underlying Contract, Business Associate shall establish, and comply with, its own reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft, which shall be consistent with and no less stringent than those required under the Red Flags Rule or the policies and procedures of Covered Entity's Red Flags Program. Business Associate shall provide its services pursuant to the Underlying Contract in accordance with such policies and procedures. Business Associate shall report any detected "red flags" (as that term is defined in the Red Flags Rule) to Covered Entity and shall cooperate with Covered Entity to take appropriate steps to prevent and mitigate identity theft.

IN WITNESS WHEREOF, the Parties hereto have duly executed this BA Agreement as of
MAY 1, 2019.

COVERED ENTITY, PIONEERS MEMORIAL HEALTHCARE DISTRICT

By: *Lawrence E Lewis*
Signature

LAWRENCE E. LEWIS
Printed Name

CHIEF EXECUTIVE OFFICER
Title

BUSINESS ASSOCIATE, CITY OF CALEXICO

By: _____
Signature
David Dale

Printed Name *City Manager*
Title

NOTICE:

If to **Covered Entity:** PIONEERS MEMORIAL HEALTHCARE DISTRICT
ATTN: CHIEF NURSING OFFICER
207 WEST LEGION ROAD
BRAWLEY, CA 92227

If to **Business Associate:** _____

PIONEERS
MEMORIAL HEALTHCARE DISTRICT

ELIZABETH MORENO
*Executive Assistant to the
Chief Nursing Officer
Nursing Administration*

207 West Legion Road • Brawley, CA 92227 • E-mail: emoreno@pmhd.org
Office: (760) 351-3265 • Mobile: (760) 909-1025 • Fax: (760) 351-4624