

Contract Number

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Fire Chief/Fire Warden
Telephone Number	387-5779
Contractor	Colorado River Indian Tribes
Contractor Representative	
Telephone Number	
Contract Term	
Original Contract Amount	\$250,000 (\$50,000 per year)
Amendment Amount	
Total Contract Amount	
Cost Center	

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

FIRE PROTECTION SERVICES AGREEMENT BETWEEN SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND COLORADO RIVER INDIAN TRIBES

This Agreement is made and entered into by and between San Bernardino County Fire Protection District, (hereinafter referred to as SBCFPD), located in the State of California and the Colorado River Indian Tribes (hereinafter to as "CRIT").

WHEREAS, both SBCFPD and CRIT provide fire protection and basic life support ("BLS") services within their respective jurisdictions; and,

WHEREAS, SBCFPD desires to contract with CRIT for CRIT to provide fire protection and BLS services in the unincorporated territory located in "Area A" on Exhibit "A," attached hereto and incorporated herein by this reference, and CRIT agrees to contract and provide for such services; and,

WHEREAS, it is the intent of the parties hereto that the fire protection and BLS services be furnished to SBCFPD by CRIT, subject to the terms and conditions contained herein; and,

WHEREAS, it is further the intent of the parties hereto that CRIT provide fire protection and BLS services to "Area A" (as noted above) and that SBCFPD pay CRIT the agreed-upon cost for providing these services; and

WHEREAS, this Agreement is entered into pursuant to the Fire Protection District Law (Health and Safety Code section 13800 et seq.) and the Joint Exercise of Powers Act (Government Code section 6500 et seq.).

NOW, THEREFORE, it is agreed as follows:

1. SCOPE OF WORK:

- A. During the term of this Agreement, CRIT shall be designated as the fire protection and BLS services provider to "Area A", and the Fire Chief designated by CRIT for providing 24/7 fire protection and BLS services to and within CRIT shall act as the Fire Chief for "Area A", together with all the powers, duties and responsibilities associated with that position in providing the services pursuant to this Agreement.
- B. CRIT will furnish to "Area A" 24/7 fire protection services, including BLS services, at the same level previously supplied by SBCFPD.
- C. CRIT will furnish to "Area A" fire cause and origin determination, including investigations at the same level, which it furnishes within its own boundaries.
- D. CRIT will include "Area A" in fire department disaster response planning at the same level CRIT furnishes within its own boundaries.
- E. SBCFPD will continue to provide fire protection planning and collect related fees for "Area A" and shall provide CRIT with copies of commercial and industrial project conditions upon final approval of such projects by the County of San Bernardino and/or SBCFPD.
- F. CRIT shall submit during the term of this Agreement to SBCFPD a yearly report of all fire and BLS services provided within "Area A."
- G. CRIT shall ensure all personnel providing services under this Agreement have all required licenses and certifications required by the State of California and the Inland Counties Emergency Medical Agency.
- H. CRIT staff shall cooperate with SBCFPD staff in responding to all subpoenas (including records and testimony), as well as records request made under the Public Records Act (Government Code section 6250 et seq.). All records generated by CRIT under this Agreement are SBCFPD records and shall be provided to SBCFPD upon demand and/or termination of this Agreement. See also Paragraph 10 of this Agreement.
- I. CRIT will utilize its personnel, station(s), equipment and supplies in providing services under this Agreement. SBCFPD is not providing CRIT personnel, station(s), equipment or supplies for these services.

2. TERM AND TERMINATION: This Agreement shall become effective July 14, 2020, and shall continue in effect until June 30, 2025, unless a) terminated by either party by giving the other party 365 days written notice of the party's intent to terminate this Agreement; or b) terminated pursuant to Paragraph 4 of this Agreement.

3. NOTICES: All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such address as the respective parties may provide in writing for this purpose:

SBCFPD: SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

Attn: Fire Chief/Fire Warden
157 W. 5th Street, 2nd floor
San Bernardino, CA 92415-0451

CRIT: COLORADO RIVER INDIAN TRIBES

Attn: Terrilynn Little, Fire Chief
26600 Mohave Road
Parker, AZ 85344

4. PAYMENT: SBCFPD shall pay the lump sum amount of \$50,000 for each fiscal year of fire protection and BLS service provided by CRIT during the term of this Agreement. Such payment by SBCFPD to CRIT shall be made semi-annually on or before August 31st and January 31th of each year. CRIT may give notice to SBCFPD by February 1st of each fiscal year of increased costs incurred by CRIT in providing the services pursuant to this Agreement, and this Agreement may be amended by authorized parties of both SBCFPD and CRIT to reflect the increased costs to CRIT, with any such amendment to be effective the date upon approval by both parties. SBCFPD shall have the option to terminate this Agreement if the parties cannot agree on the amount of additional costs proposed by CRIT.
 - A. Following the initial contract year and thereafter, personnel, labor, and benefit costs shall be adjusted annually by the amendment process described in this Paragraph 4 consistent with CRIT fire personnel MOUs (Memorandum of Understanding); while all other non-personnel type budget costs shall adjust annually to allow for a cost-of-living adjustment (COLA) based on the Riverside-San Bernardino-Ontario, CA CPI-U. The preceding January through December CPI-U period shall be used when determining the adjustment but shall not exceed four (4) percent or fall below two (2) percent. Administrative cost related to the execution of this contract will be adjusted annually and cannot exceed 4%. Administrative cost that exceed 4%, must be approved by SBCFPD.
 - B. CRIT shall accept all payments from SBCFPD via electronic funds transfer (EFT) directly deposited into CRIT's designated checking or other bank account. CRIT shall promptly comply with directions and accurately complete forms provided by SBCFPD required to process EFT payments.
5. MODIFICATIONS TO AGREEMENT: A review of the Agreement terms may be initiated at any time by either party, upon written notice to the other. The parties agree to negotiate in good faith and deal fairly with respect to performance under this Agreement and to any proposed modifications to this Agreement. This Agreement may be modified with 90 day notice only in writing and with the approval of both CRIT and SBCFPD, through SBCFPD's Board of Directors.
6. EMPLOYEE STATUS/WORKERS' COMPENSATION: It is expressly understood that in the performance of the services herein provided for, CRIT shall be, and is, an independent contractor and is not an agent or employee of SBCFPD. CRIT has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, assignment, compensation and discharge of all persons employed by CRIT and assisting in the performance of services hereunder. CRIT shall be solely responsible for all matters relating to the payment of its employees including compliance with social security, workers' compensation, withholding, and all regulations governing such matters.
7. ANNUAL OPERATING PLAN: The parties hereto agree to jointly develop and annually review an Annual Operating Plan (AOP) which will become part of this Agreement as Exhibit "B". The AOP will describe the fire organization of CRIT and identify initial attack response resources. The Fire Chief of each agency is hereby authorized to approve the AOP and any amendments thereto.
8. INDEMNIFICATION: CRIT agrees to indemnify, defend (with counsel reasonably approved by SBCFPD) and hold harmless SBCFPD and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause

whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by SBCFPD on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. CRIT's indemnification obligation applies to SBCFPD's "active" as well as "passive" negligence but does not apply to SBCFPD's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

9. INSURANCE:

A. Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming SBCFPD and its officers, employees, agents and volunteers as additional insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for SBCFPD to vicarious liability but shall allow coverage for SBCFPD to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

B. Waiver of Subrogation Rights

CRIT shall require the carriers of required coverages to waive all rights of subrogation against SBCFPD, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit CRIT and CRIT's employees or agents from waiving the right of subrogation prior to a loss or claim. CRIT hereby waives all rights of subrogation against SBCFPD.

C. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by SBCFPD.

D. Severability of Interests

CRIT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between CRIT and SBCFPD or between SBCFPD and any other insured or additional insured under the policy.

E. Proof of Coverage

CRIT shall furnish Certificates of Insurance to the SBCFPD Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CRIT shall maintain such insurance from the time CRIT commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, CRIT shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

F. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

H. Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, SBCFPD has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by SBCFPD will be promptly reimbursed by CRIT or SBCFPD payments to CRIT will be reduced to pay for SBCFPD purchased insurance.

I. Insurance Review

Insurance requirements are subject to periodic review by SBCFPD. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of SBCFPD. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against SBCFPD, inflation, or any other item reasonably related to SBCFPD's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. CRIT agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of SBCFPD to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of SBCFPD.

J. CRIT agrees to provide insurance set forth in accordance with the requirements herein. If CRIT uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, CRIT agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, CRIT shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- i. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of CRIT and all risks to such persons under this contract.

If CRIT has no employees, it may certify or warrant to SBCFPD that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by SBCFPD's Director of Risk Management.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- ii. Commercial/General Liability Insurance – CRIT shall carry General Liability Insurance covering all operations performed by or on behalf of CRIT providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - a. Premises operations and mobile equipment.
 - b. Products and completed operations.

- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

- iii. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If CRIT is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If CRIT owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- iv. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

10. CRIT RECORDS:

CRIT shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to CRIT’s personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

SBCFPD, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of CRIT in the delivery of services provided under this Contract. CRIT shall give full cooperation, in any auditing or monitoring conducted. CRIT shall cooperate with SBCFPD in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by SBCFPD.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by SBCFPD representatives for a period of three years after final payment under this Contract or until all pending SBCFPD, State and Federal audits are completed, whichever is later.

- 11. WAIVER: No waiver of a breach of any provision of this Agreement will constitute a waiver of any other breach, or of such provision. Failure of either party to enforce at any time, or from time-to-time, any provision of this agreement will not be construed as a waiver thereof. The remedies herein reserved will be cumulative and additional to any other remedies in law or equity.

12. PARTIAL INVALIDITY: Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions will be deemed severable and will not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.
13. CHOICE OF LAW: This Contract shall be governed by and construed according to the laws of the State of California. CRIT shall comply with all applicable Federal, State, County, and other laws and regulations in the provision of services under this Agreement.
14. VENUE: The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.
15. ATTORNEYS' FEES AND COSTS: If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.
16. CONTRACT ASSIGNABILITY: Without the prior written consent of SBCFPD, the Contract is not assignable by CRIT either in whole or in part.
17. RECITALS: The recitals set forth above are true and correct and incorporated herein by this reference.
18. CONFIDENTIALITY:

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. CRIT shall execute and comply with the attached Business Associate Agreement (Attachment "A"). CRIT further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by CRIT for Services performed pursuant to Contract.
19. RELEASE OF INFORMATION: No news releases, advertisements, public announcements or photographs arising out of the Contract or CRIT's relationship with SBCFPD may be made or used without prior written approval of SBCFPD.
20. TIME OF THE ESSENCE: Time is of the essence in performance of this Contract and of each of its provisions.
21. CORRECTION OF PERFORMANCE DEFICIENCIES:

A. Failure by CRIT to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- B. In the event of a non-cured breach, SBCFPD may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- i. Afford CRIT thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of SBCFPD; and/or

- ii. Discontinue reimbursement to CRIT for and during the period in which CRIT is in breach, which reimbursement shall not be entitled to later recovery; and/or
- iii. Withhold funds pending duration of the breach; and/or
- iv. Offset against any monies billed by CRIT but yet unpaid by SBCFPD those monies disallowed pursuant to Item "ii" of this paragraph; and/or
- v. Terminate this Contract immediately and be relieved of the payment of any consideration to CRIT. In the event of such termination, SBCFPD may proceed with the work in any manner deemed proper by SBCFPD. The cost to SBCFPD shall be deducted from any sum due to CRIT under this Contract and the balance, if any, shall be paid by CRIT upon demand.

22. LEGALITY AND SEVERABILITY: The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.
23. EMPLOYMENT DISCRIMINATION: During the term of the Contract, CRIT shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. CRIT shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
24. DEBARMENT AND SUSPENSION: CRIT certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). CRIT further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.
25. CONTRACT EXCLUSIVITY: This is not an exclusive Contract. SBCFPD reserves the right to enter into a contract with other contractors for the same or similar services. SBCFPD does not guarantee or represent that CRIT will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.
26. WAIVER OF SOVEREIGN IMMUNITY: CRIT expressly waives its sovereign immunity from a suit by SBCFPD under Paragraph 8, "INDEMNIFICATION" of this Agreement in state or federal court and agrees that any and all claims, actions, losses, damages, and/or liability that arise out of this Agreement and brought by SBCFPD must be brought before the courts of the State of California or the United States District Court.

IN WITNESS THEREOF, this Agreement has been executed and approved and is effective and operative as to each of the parties as herein provided.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

►

Curt Hagman, Chairman, Board of Directors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch, Secretary

By _____
Deputy

COLORADO RIVER INDIAN TRIBES

(Print or type name of corporation, company, contractor, etc.)

By ►

(Authorized signature - sign in blue ink)

Name Denis Patch

(Print or type name of person signing contract)

Title Chairman

(Print or Type)

Dated: _____

Address 26600 Mohave Rd.
Parker, AZ 85344

FOR COUNTY USE ONLY

Approved as to Legal Form

►

Scott Runyan, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

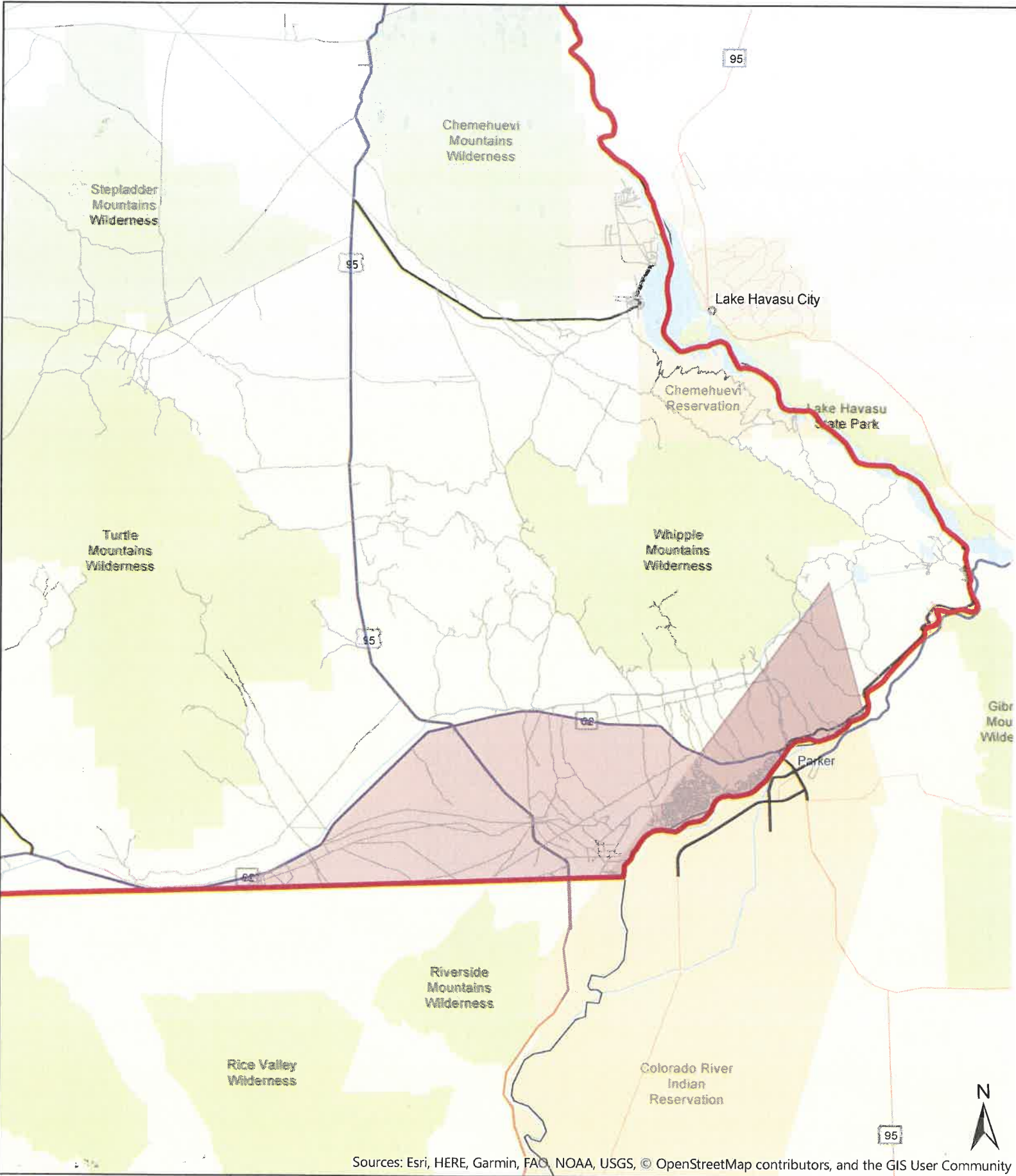
►

Dan Munsey, Fire Chief/Fire Warden

Date _____

Exhibit "A"
"Area A"

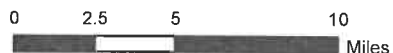
CRIT Fire Protection Area



Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



 COLORADO RIVER INDIAN TRIBES PROTECTION AREA
 SAN BERNARDINO COUNTY BOUNDARY



EO REVISED 20191112

Exhibit "B"
ANNUAL OPERATING PLAN
FY2020-21

**SAN BERNARDINO COUNTY/COLORADO RIVER INDIAN TRIBES
AGREEMENT FOR FIRE PROTECTION
TO THE UNINCORPORATED COMMUNITY OF BIG RIVER**

I. INCIDENT RESPONSE: San Bernardino County Fire Protection District (BDC) will retain Unified Ordering Point responsibility and will process/approve all requests from CRIT Fire for additional resources. Per the Agreement, if BDC resources are unavailable and additional CRIT Fire resources are requested by BDC, beyond those stipulated in the agreement and listed in this AOP, resources must be approved by the CRIT Fire Duty Chief and will be billed as "Assistance by Hire" (ABH). The "Closest Resources" concept shall be utilized to fill initial action responses utilizing CRIT Fire whenever available.

A. Structure Fire:

1st Alarm:

CRIT- One Engine

Buckskin Fire District – One Engine

BDC – One Engine and one Battalion Chief

Additional Alarms:

CRIT Fire – All additional resource requests must approved by both CRIT Fire and BDC Duty Chiefs and will be paid ABH.

BDC – Three Engines, one Battalion Chief and logistical support

B. Vehicle & Other Fires (non wildland):

Automobile:

CRIT Fire- One Engine

BDC – Notification to BDC Dispatch.

Motorhomes & Semi-Truck/Trailers

CRIT- One Engine

Other Fires (non wildland)

CRIT- One Engine

BDC – Notification to BDC Dispatch

C. EMS – Medical Aid:

CRIT Fire - One Engine

Ambulance Response – Closest ambulance

D. EMS – Rescue/Extrication:

Traffic Collision

CRIT Fire - One Engine with notification and/or response of Battalion Chief

BDC – Notification to BDC Dispatch.

Rescue –

CRIT Fire – One Engine

Technical Rescue –

CRIT Fire – One Engine

BDC – One Engine and one Battalion Chief

Ambulance Response – Closest ambulance

E. Hazardous Materials:

CRIT Fire

BDC – One Engine and one Haz-Mat Team

F. Wildland Fires

CRIT Fire – One Engine (Type 1, 2 or Type 3),

BDC – One Battalion Chief

Additional specialized resources from BDC (Helicopters, Crews, Dozers, etc.) to be paid ABH.

II. INCIDENT COMMUNICATIONS:

Incident communications shall utilize the radio plan as listed in Exhibit “C”

A. CRIT Fire-only Responses – will operate on assigned CRIT Fire frequency.

B. Multi-Agency Responses – will operate on assigned BDC Frequencies See exhibit

III. INCIDENT COMMAND: As resources arrive and command responsibility is transferred, the role of Incident Commander (IC) will progress through the following succession:

A. CRIT Fire Company Officer

B. First-in CRIT Fire Chief Officer

C. First-arriving BDC Chief Officer

Unified Command will be utilized as necessary and appropriate for incidents immediately adjacent to County lines.

IV. CAUSE DETERMINATION AND INVESTIGATION: The IC will conduct initial cause-determination investigations. Follow-up incident investigations will be conducted by BDC if accidental cause cannot be determined, or if criminal or civil violations are suspected. Any criminal restitution or civil cost recovery shall be BDC's responsibility, following payment/reimbursement for CRIT Fire resources where indicated.

V. INCIDENT DOCUMENTATION: CRIT Fire ECC will email the Incident History CAD printout to BDC

dispatch upon completion of the initial dispatch.

The responding Company Officer will complete the necessary SunPRO (meets NFIRS requirements) incident report for incidents occurring within the Agreement Area. Copies of SunPRO reports will be provided with each "Assistance by Hire" invoice included in the Quarterly billing.

VI. ESTIMATED ANNUAL COST: Costs for FY2020/21, in accordance with Section 2 "COMPENSATION" of the Agreement are estimated as follows:

FY 2020-21
BDC Allocated Cost.....\$50,000.00

V. BILLING RATES: CRIT Fire Assistance for Hire Billing Rates shall be on file with BDC. These rates will be used for calculating any additional costs in accordance with Section 2 "COMPENSATION" of the Agreement, to which this ANNUAL OPERATING PLAN is attached.

VI. QUARTERLY INVOICES: CRIT Fire will prepare a quarterly invoice by the 15th of the month following the beginning of each quarter of the fiscal year. This invoice will itemize one quarter of the Total Annual Cost rate for the fiscal year, as well as any additional "Assistance by Hire" resources assigned during the quarter. "Assistance by Hire" charges will be itemized by incident, including Incident Number, Date, Call-Time, Resource call sign, and duration of assignment in hours (to 1/10th of an hour).

In accordance with the Agreement, BDC will have 30 days to review the invoice and make payment to Colorado River Indian Tribes.

This Operating Plan has been approved by the following and is authorized as Exhibit "B" to the SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT/ CRIT Fire AGREEMENT for Eastern San Bernardino County.

_____, Fire Chief
CRIT Fire

Date

Daniel Munsey, Fire Chief/Fire Warden
San Bernardino County Fire Department

Date

Exhibit "C"
Communication Plans

COMMUNICATIONS PLAN – APPENDIX

San Bernardino County uses an 800mhz trunking system to communicate with CONFIRE dispatch “Comm Center” in Rialto, CA. The county is in the process of upgrading the radio system to be a digital trunking system at all sites countywide. Currently the radio site that covers the lower Colorado River area is served from Black Peak near Parker AZ and is still an analog repeater.

Command channel: The only way to contact Comm Center is via the 800mhz repeater at Black Peak on channel “FIRE-D” (FIR-D on the display). This has been accomplished by using a radio loaned by SBCoFD to the cooperating agency. The radios currently on loan have already been upgraded to include the “new” digital channels for use at a time to be announced after the upgrade is complete in the lower Colorado River area. At that time, units will be advised to switch to the digital command channel “3-Command-9”.

Tactical channels: Due to the need for every firefighter to have a tactical radio, incidents near the Colorado River use VHF channels for on scene tactics as there is no monthly cost for these radios (compared to the SBCo 800mhz) and they are more readily available. This also follows suit with most other agencies serving Arizona. The national interoperability channels are currently being used: VFIRE21, VFIRE22, VFIRE23.

COMMUNICATION RESOURCE AVAILABILITY WORKSHEET						Frequency Band	Description			
ICS 217A						VHF	Interoperability frequencies			
Channel	Configuration	Channel Name/Trunked Radio System Tailgroup	Eligible Users	RX Freq. N or W	RX Tone/NAC	TX Freq. N or W	Tx Tone/NAC	Mode A/D or M	Remarks	
1	Repeater Pair	FIR-D	Fire	853.4125	D131	808.4125	D131	A	Repeater site at Black Mountain	
2	Trunking sys	3-CMD-9	Fire	P25 digital	n/a	P25 digital	n/a	D	*After upgrade to digital system	
3	Simplex	VFIRE21	Fire	154.2800 N	Tone 6 155.7	Simplex	Tone 6 155.7	A	Primary AZ-Calif tactical	
4	Simplex	VFIRE22	Fire	154.2650 N	Tone 6 155.7	Simplex	Tone 6 155.7	A	Secondary AZ-Calif tactical	
5	Simplex	VFIRE23	Fire	154.2950 N	Tone 6 155.7	Simplex	Tone 6 155.7	A	Tertiary AZ-Calif tactical	

Attachment "A"
Business Associate Agreement

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Fire Protection District (hereinafter Covered Entity) and the Colorado River Indian Tribes (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

I. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

- a. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
- b. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
- c. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
- d. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
- e. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
- f. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
- g. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.

- h. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
- i. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
- j. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

II. Obligations and Activities of BA

a. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this 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 BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

b. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

c. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.

- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

- d. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

- e. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
 - 1. Date the Breach or suspected Breach occurred;
 - 2. Date the Breach or suspected Breach was discovered;
 - 3. Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
 - 4. Number of potentially affected Individual(s) with contact information; and
 - 5. Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 - 1. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - 2. The unauthorized person who had access to the PHI;
 - 3. Whether the PHI was actually acquired or viewed; and
 - 4. The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 - 1. If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 - 2. If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

- f. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill

its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

g. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

h. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

i. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

j. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

k. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

l. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

m. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

n. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

o. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

p. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

q. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

r. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

s. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

III. **Obligations of CE**

- a. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
 - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
 - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
 - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

IV. General Provisions

- a. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

- b. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

- c. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

- d. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- e. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

- f. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

- g. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

- h. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.