



Agreement No. 6340.08
Board Approval: APR 04 2006
Purchase Order: C 646561

29590

AGREEMENT FOR SERVICES

THIS AGREEMENT is made this 10th day of November, 2005, between CITY OF LONG BEACH hereinafter called the Contractor, and LONG BEACH UNIFIED SCHOOL DISTRICT OF LOS ANGELES COUNTY, hereinafter called the District.

The Contractor agrees to perform services for the District as follows: Provide mantoux intradermal skin tests and/or follow-up x-rays to Head Start parent volunteers, as needed. District and Consultant mutually agree to abide by the terms of the Business Associate Agreement attached hereto as Exhibit A and incorporated herein by reference.

The work will be performed under the direction of the Director, Head Start, for the District.

The District agrees to pay the Contractor the sum not to exceed FIVE HUNDRED DOLLARS AND NO/100 (\$500.00), for the above services.

The effective time period of this agreement is July 1, 2005 through June 30, 2006.

The Contractor agrees to provide Workers' Compensation Insurance covering services to be provided by Contractor under this agreement, or to self-insure such services. Contractor also agrees to hold harmless and indemnify the District, its officers, agents and employees, with respect to all damages, costs, expenses or claims, in law or in equity, arising or asserted because of injuries to or death of persons or damage to, destruction, loss or theft of property arising out of faulty performance of the services to be performed by Contractor hereunder, and Contractor agrees to defend any and all actions, suits or other legal proceedings, at Contractor's own expense, cost and risk, that may be brought or instituted against the District, its officers, agents and employees, on any such claim or demand, and pay or satisfy any final judgment or award against the District, its officers, agents or employees in any such action, suit or legal proceeding.

During the entire term of this Contract, the Contractor, if applicable, shall fully comply with the provision of Education Code 45125.1 (Fingerprint Requirements), when it is determined that the Contractor will have contact with Long Beach Unified School District pupils in the performance of the work of the Contract.

It is expressly understood and agreed to by both parties hereto that the Contractor, while engaged in carrying out and complying with any of the terms and conditions of this contract, is an independent contractor and is not an officer, agent or employee of the aforesaid District.

In accordance with Education Code Section 17604, this contract is not valid or an enforceable obligation against the District until approved or ratified by motion of the governing board duly passed and adopted.

CITY OF LONG BEACH

LONG BEACH UNIFIED SCHOOL DISTRICT OF LOS ANGELES COUNTY

By [Signature]
Print Name Gerald R. Miller
Title City Manager
Date 3-9-06
Address 333 West Ocean Blvd.
Long Beach, California 90802
Phone (562) 570-6916
Fax (562) 570-7650
Tax ID# [Redacted]

By [Signature]
Barrick L. Bartlett
Purchasing and Contracts Director
Date 4/5/06

BY [Signature]
ROBERT E SHANNON, City Attorney
8/22, 2006

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered as of _____, 20__ by and between _____, a _____ [corporation, partnership, dba], whose business address is

_____ (hereinafter referred to as "Business Associate"), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as "City" or "Covered Entity").

WHEREAS, the City has a Department of Health that provides a multitude of health care and related services; and

WHEREAS, in the course of providing health care and related services the City obtains protected health information; and

WHEREAS, Business Associate performs particular duties and/or provides particular services to the City; and

WHEREAS, the City wishes to disclose some information to Business Associate, some of which may contain protected health information; and

WHEREAS, the City and Business Associate intend to protect the privacy and provide for the security of protected health information in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws, including, but not limited to Title 45, Section 164.504(e) of the Code of Federal Regulations.

NOW, THEREFORE, in consideration of the mutual terms covenants, and conditions in this Agreement, the parties agree as follows:

1. DEFINITIONS. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule codified in Title 45, Sections 160-164 of the Code of Federal Regulations.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

a. *Non-disclosure.* Business Associate agrees to not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.

b. *Safeguards.* Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information.

- c. *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.
- d. *Reporting of disclosures.* Business Associate agree to report to Covered Entity any use or disclosure of the protected health information not provided for by this Agreement of which it becomes aware.
- e. *Business Associate's Agents.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. *Availability of Information to City.* Business Associate agrees to provide prompt access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual upon Covered Entity's request in order to meet the requirements under 45 CFR § 164.524.
- g. *Amendment of Protected Health Information.* Business Associate agrees to promptly make any amendment(s) to protected health information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an individual.
- h. *Internal Practices.* Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, covered entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of the Secretary determining the Business Associate's compliance with the privacy rule.
- i. *Reporting of Disclosures.* Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for the City to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR § 164.528.

- j. *Availability of Information to Covered Entity.* Business Associate agrees to promptly provide to Covered Entity or an individual information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR § 164.528.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

Except as otherwise limited in this Agreement, Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. The specific use and disclosure provisions are as follows:

- a. Except as otherwise limited in this Agreement, Business Associate may use protected health information for the proper management and administration of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use protected health information to provide data aggregation services to covered entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- c. Business Associate may use protected health information to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).

4. OBLIGATIONS OF COVERED ENTITY.

- a. *Notification of Limitations in Notice of Privacy Practices.* Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of covered entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- b. *Notification of Change or Revocation of Permission.* Covered entity shall notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.
- c. *Notification of Restrictions.* Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may effect Business Associate's use or disclosure of protected health information.

5. PERMISSIBLE REQUESTS BY COVERED ENTITY.

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended and shall not be construed to limit Business Associate's capacity to use or disclose protected health information for the proper management and administration of the Business Associate or to provide data aggregation services to Covered Entity as provided for and expressly permitted under Section 3 (a), (b), and (c) of this Agreement.

6. TERM AND TERMINATION.

- a. *Term.* The term of this Agreement shall be effective upon execution, and shall terminate when all of the protected health information 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 protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.

- b. *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- c. *Effect of Termination.*
1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.
 2. In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.

7. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.

Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement with the Covered Entity, available to Covered Entity, at no cost to Covered Entity to testify as witnesses or otherwise, in the event of litigation or administrative proceedings commenced against Covered Entity, its directors, officers, or employees based on a claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security or privacy, except where Business Associate or its subcontractors, employees or agents are named as an adverse party.

8. MISCELLANEOUS

- a. *References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for covered entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996. Amendments must be in writing and signed by the parties to the Agreement.
- c. *Survival.* The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- d. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

9. LAW. This Agreement shall be governed by and construed pursuant to federal law and the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Business Associate shall comply with all laws, ordinances, rules and regulations of all federal, state and local governmental authorities.

10. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

11. INDEMNITY. Business Associate shall protect, defend, indemnify and hold City, its officials, employees, and agents (collectively in this Section referred to as "City") harmless from and against any and all claims, demands, causes of action, losses, damages, and liabilities, whether or not reduced to judgment, which may be asserted against City arising from or attributable to or caused directly or indirectly by Business Associate, Business Associate's employees, or agents in the performance of the duties under this Agreement or any alleged negligent or intentional act, omission or misrepresentation by Business Associate, Business Associate's employees or agents, which act, omission or misrepresentation is connected in any way with performance of the duties under this Agreement. If it is necessary for purposes of resisting, adjusting, compromising, settling, or defending any claim, demand, cause of action, loss, damage, or liability, or of enforcing this provision, for City to incur or to pay any expense or cost, including attorney's fees or court costs, Business Associate agrees to and shall reimburse City within a reasonable time. Business Associate shall give City notice of any claim, demand, cause of action, loss, damage or liability within ten (10) calendar days.

12. AMBIGUITY. In the event of any conflict or ambiguity in this Agreement, such ambiguity shall be resolved in favor of a meaning that complies and is consistent with HIPAA, HIPAA Regulations and California law.

13. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs, including appeals.

14. NOTICES. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Business Associate at the address first stated herein, and to the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attention: Director, Health Department. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.

15. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

16. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7,12 and 14 prior to termination or expiration of this Agreement, and shall not extinguish any warranties hereunder.

17. ADVERTISING. Business Associate shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.

18. THIRD PARTY BENEFICIARY. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all of the formalities required by law as of the date first stated herein.

a _____
(corporation, partnership, individual)

_____, 20__ By _____

Title: _____

_____, 20__ By _____

Title: _____

CITY OF LONG BEACH, a
municipal corporation

_____, 20__

Designee

By _____
City Manager or

"City"

The foregoing Agreement is hereby approved as to form this ___ day of
, 20

ROBERT E. SHANNON, City Attorney

By _____

Deputy