State of Washington
Department of Corrections

Contract No. K9566
Amendment No. 1

This Amendment is made by the state of Washington, Department of Corrections, hereinafter referred to as Department, and Pacific County, hereinafter referred to as the County, for the purpose of amending the above-referenced Contract, heretofore entered into between the Department and the County.

WHEREAS the purpose of this contract amendment is to extend the period of performance, amend the base rate, and add language;

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, the Department and County agree as follows:

The following sections are amended, in part, as follows:

Section 2.1 Term. This Agreement supersedes all previous oral and written contracts and agreements between the parties relating to the confinement, care, and treatment of Department Offenders. This Agreement commences upon final signature, and continues through ((~~June 30, 2014~~)) June 30, 2016, unless terminated by either party pursuant to this Agreement.

Section 3.1 **Target Population.** Department Offenders transferred to the County will be primarily, but not exclusively, those who are in violation of community supervision requirements, awaiting a hearing on alleged violations, parenting sentencing alternative violators and work release violators.

Section 3.11 **Billing.** The base rate will be eighty ($80.00) dollars per day per Department Offender from date of execution of this contract until June 30, 2013. The base rate will increase on July 1, 2013, to eighty two dollars and forty cents ($82.40) per offender day. Beginning July 1, 2014, the rate shall be eighty-four dollars and eighty-seven cents($84.87) per day. Beginning July 1, 21015 the rate shall be eighty-five ($85.00) dollars per day, the statutory maximum, for the remainder of the contract. The County agrees to bill monthly for the actual bed days used in the preceding month. The County also agrees to submit itemized bills to the Department in electronic spreadsheet format that includes the Offender name, DOC number, Date of Birth, and dates the Offender was held under the Department's authority

The following is added to Section 5.2:

Monitoring. The Department's PREA Coordinator will monitor the Contractor's compliance with PREA standards. Monitoring may include, but is not limited to site visits, access to contractor's data, and review of applicable documentation. Should the contractor fail to comply with PREA standards, the Department is authorized, following notice and a reasonable opportunity to cure, to terminate this agreement.

Additions to this text are shown by underline and deletions by ((~~strikeout~~)). All other terms and conditions remain in full force and effect. The effective date of this amendment is January 1, 2013.

THIS CONTRACT AMENDMENT, consisting of two (2) pages, is executed by the persons signing below who warrant that they have the authority to execute the contract.

PACIFIC COUNTY SHERIFF'S OFFICE

Scott Johnson, Sheriff DATE

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS

Bernard Warner, Secretary DATE

BOARD OF COMMISSIONERS PACIFIC COUNTY , WASHINGTON

Steve Rogers, Chair DATE

Frank Wolfe, Commissioner DATE

Lisa Ayers, Commissioner DATE

ATTEST:

Marie Guernsey DATE
Clerk of the Board

Approved as to Form
This amendment format was approved by the office of the Attorney General Approval on file.

COPY

INTERAGENCY AGREEMENT

PURPOSE

This Agreement is entered into by Pacific County (County) and the Department of Corrections (Department) for the purpose of maximizing the efficient and cost effective use of existing resources and to provide adequate facilities and programs for the confinement, care, and treatment of Department Offenders in accord with the provisions of RCW 72.68.040. The Department and the County specifically find this Agreement is necessary and desirable in order to provide adequate housing and care to the Department Offenders transferred to the County

In consideration of the promises, payments, covenants and agreements contained in this Agreement, the parties agree as follows:

Article I
DEFINITIONS

Section 1.1 ADP – Average Daily Population of Department Offenders housed at the Facility.

Section 1.2 Base Rate Per Diem - The cost per day for care, housing and board of a Department Offender.

Section 1.3 County – Pacific County and its employees, contractors, vendors, and volunteers.

Section 1.4 Department or DOC – Washington State Department of Corrections.

Section 1.5 Department Offender - Any Offender under the Department's jurisdiction.

Section 1.6 DOC Utilization Management Office - The Department's medical contact that receives, reviews, and approves County extraordinary medical expense requests to provide necessary medical care to Department Offenders. During normal business hours the Nurse Desk is available at (NurseDesk@DOC1.wa.gov or 360-725-8733). After hours the Medical Duty Officer is available at 360-725-8728.

Section 1.7 Extraordinary Medical Care - Medically necessary care that is not commonly available through the Facility Health Services and incurs additional cost.

Section 1.8 Extraordinary medical expense - Medical expenses beyond the medical expense included in the Base Rate Per Diem for in Facility care of Department Offenders.

Section 1.9 Facility – The County operated correctional Facility for the housing of adult Offenders.

Section 1.10 Formulary Medications - Medications described in the DOC Pharmaceutical Management and Formulary Manual. The formulary can be viewed at: http://doc.wa.gov/business/healthcareproviders/default.asp.

Section 1.11 In-Facility care - Medical care provided to Department Offenders as a part of the Base Rate Per Diem to include over-the-counter medications, routine medical/mental health/dental care, regular medical screening, and emergent medical treatment, identical to

services provided to other County inmates.

Section 1.12 Inmate - Any resident of the Facility that is not a Department Offender.

Section 1.13 Licensed Practitioner - Any licensed health care practitioner performing services within the person's authorized scope of practice following RCW Title 18.

Section 1.14 Medicaid - Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

Section 1.15 Medically Necessary Care - Medical care that meets one or more of the following criteria for a given patient at a given time:

Section 1.15.1	Is essential to life or preservation of limb, OR
Section 1.15.2	Reduces intractable pain, OR
Section 1.15.3	Prevents significant deterioration of activities of daily living (ADLs), OR
Section 1.15.4	Is of proven value to significantly reduce the risk of one of the three outcomes above (e.g. certain immunizations), OR
Section 1.15.5	Immediate intervention is not medically necessary, but delay of care would make future care or intervention for intractable pain or preservation of ADLs significantly more dangerous, complicated, or significantly less likely to succeed, OR
Section 1.15.6	Reduces severe psychiatric symptoms to a degree that permits engagement in programming that advances correctional interests, OR
Section 1.15.7	Is described as part of a Departmental policy or health care protocol or guideline and delivered according to such policy, protocol, or guideline, OR
Section 1.15.8	From a public health perspective, is necessary for the health and safety of a community of individuals and is medically appropriate, but may not be medically necessary for the individual (for example, treatment for head lice).
Section 1.15.9	Not considered experimental or to be lacking in medically recognized professional documentation of efficacy; and
Section 1.15.10	Not administered solely for the convenience of the Offender or the health care provider.

Section 1.16 Offender Day – an Offender Day is any day a Department Offender is in the custody of the County including the first day the Offender is delivered to the County. An Offender Day ends at midnight of the day immediately preceding the day of the Offender's release or return to the custody of the Department. An Offender Day shall not include any day that is by state law the financial responsibility of the County or any other jurisdiction.

Section 1.17 Offender Health Plan - The Department's Offender Health Plan (OHP) describes the medically necessary medical care, mental health, and dental care services available to

Department Offenders, as well as the services that are limited or not available. The OHP is not a contract or a guarantee of services to Department Offenders. The OHP can be reviewed at http://doc.wa.gov/family/Offenderlife/docs/OffenderHealthPlan.pdf.

Section 1.17.1 The Department under the OHP and consistent with RCW 70.48.130(2), does not consider experimental or elective procedures to be medically necessary. The Department will not reimburse the County for elective or experimental medical procedures. The Department shall not be responsible for the payment of or for medical care required as a result of any tort committed by the County, or its employees, or by its agents, contractors, vendors, or volunteers in the course of their providing services to Department Offenders, or for care which could have foreseeably been prevented.

Section 1.18 Secretary – the Secretary of the Department of Corrections or his or her designee.

Article II
TERM OF THE AGREEMENT

Section 2.1 **Term.** This Agreement supersedes all previous oral and written contracts and agreements between the parties relating to the confinement, care, and treatment of Department Offenders. This Agreement commences upon final signature, and continues through June 30, 2014, unless terminated by either party pursuant to this Agreement.

Section 2.2 **Termination.** This Agreement may be terminated by either party, without cause, upon sixty (60) days written notice to the other party. Not later than 60 days after the receipt or delivery of a termination notice, the Department agrees to take physical custody of Department Offenders confined at the Facility pursuant to this Agreement. Both parties agree to waive the written notice requirement if either party in its sole discretion, determines there is an immediate threat to public safety, health, or welfare that requires termination. Both parties agree to provide verbal and written notice of the termination as soon as possible in such cases.

Section 2.3 **Termination Due to Non-Appropriation of Funds.** The terms of this Agreement are contingent upon sufficient appropriations by the Washington State Legislature to the Department to pay sums pursuant to this Agreement. If the Legislature does not allocate sufficient appropriations, this agreement shall terminate immediately without penalty and without the sixty (60) day notice period. The Department is responsible for the County services provided to Department Offenders prior to termination and removal of Department Offenders.

Article III
RESPONSIBILITIES

Section 3.1 **Target Population.** Department Offenders transferred to the County will be primarily, but not exclusively, those who are in violation of community supervision requirements, awaiting a hearing on alleged violations, and work release violators.

Section 3.2 **Offender Housing.** The County agrees to confine and supervise Department Offenders Facility pursuant to this Agreement. Department Offenders may be integrated with the County's inmate population, as allowed by law, regulation, or ordinance. Placement of Department Offenders in the Facility may occur at any time after the beginning of the term of this Agreement, pursuant to Section 3.03, below.

Section 3.3 **Transportation of Department Offenders**

Section 3.3.1 The Department agrees to provide or arrange for transportation of its Offenders to and from the Pacific County Facility except when the transportation is determined by Facility staff to be necessary to secure emergency medical evaluation or treatment, or when transportation is required to support the orderly operation of the Facility, in which case the County shall provide such transportation.

Section 3.3.2 The County agrees to assist, when possible, in the transportation of Department Offenders to and from other facilities in surrounding counties, to include placing Department Offenders on County transportation during regularly-scheduled trips.

Section 3.3.3 County Transport Costs. The Department agrees to reimburse the County for all reasonable costs incurred by the County for its transports of Department Offenders requested by the Department, unless the Department Offender is transported by the County during the County's regularly scheduled trip.

Section 3.3.4 Department Transportation to Department Facilities. The Department agrees to provide the County a minimum of 24 hours written notice prior to transporting a Department Offender from the County Facility. The Department shall be responsible for the transportation of Department Offenders to and from Department facilities.

Section 3.4 **Return of Department Offenders.**

Section 3.4.1 Return of Department Offenders to Department. The Department may demand that a Department Offender be returned to Department custody at any time. These Offender returns will be at the Department's expense unless the Department Offender is transported by the County during a County's regularly scheduled trip to the scheduled location.

Section 3.4.2 County's Return of Department Offenders. The County may request to return a Department Offender to the Department, at any time. The Department agrees to accept custody as soon as possible but not later than 7 days after receiving the County's request. If the County requests the Department Offender's return, and the Department cannot meet the County's timeframe, then the County may transport the Offender to the nearest Department designated location.

Section 3.4.3 Court's Return of Department Offenders. If a Court with competent jurisdiction orders a Department Offender be returned to the Department, then the Department agrees to accept custody as soon as possible, but not later than three (3) days after receiving notice. The Department shall be responsible for the Department Offender's transportation to the nearest suitable Department designated location, unless the Offender can be transported by the County during the County's regularly-scheduled trip.

Section 3.5 **Return of Department Offender to the Community.** The County shall complete a national "Wants and Warrants" check and agrees to notify the Department, and any interested jurisdiction, of the Department Offender's pending release at least seven (7) business days and not later than 24 hours prior to a Department Offender's release to the community due to the Offender's to completion a sanction or sentence. The Department Offender may be released directly from the Facility.

Section 3.6 **Jurisdiction.** Department Offenders placed in County custody are under the jurisdiction of the Department, however upon the Offender's placement at the Facility, the Department authorizes the County to assume custody. The Department agrees to provide the County with documentation of the County's authority to detain the Offender. The County agrees to notify the Department immediately, if and when non-department holds are placed on, closed or removed from Department Offenders.

Section 3.6.1 Upon transfer of the Offender to any other Facility, the County agrees to provide a copy of the authorization to hold the Offender on the Department's behalf.

Section 3.7 **Public Records.** Both parties agree to comply with Washington State's Public Records Act, RCW 42.56.040 through 42.56.570 (act). The act requires each party to make available for inspection and copying nonexempt "public records." A "public record" includes any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the party in accord with RCW 42.56.070(1).

Section 3.8 **Medical Care.** It is the intent of the parties that Department Offenders in the County's custody receive safe, appropriate and cost-effective medical care consistent with the Department's Offender Health Plan.

Section 3.8.1 County Responsibilities

3.8.1.1 The County agrees to provide Department Offenders in facility care identical to the care provided to County inmates. The County agrees to provide Department Offenders twenty-four (24) hour access to emergent medical care. The County agrees to provide the most cost-effective, medically appropriate method of transportation and security for all Department Offenders taken to out of facility, in-county emergent and non-emergent medical appointments.

3.8.1.2 The County agrees to obtain pre-authorization through the Department's Utilization Management Office for all health care beyond what is normally provided to County inmates, under this Agreement. In an emergency, when pre-authorization is not feasible, the County agrees to notify the Department, as soon as possible, but not later than 4 hours after transporting the Department Offender to the nearest emergency room or other medical facility and before any hospital admission.

3.8.1.3 The County agrees to be financially responsible for all unauthorized, non-emergent and non-medically necessary health care provided to Department Offenders.

Section 3.8.2 Department Responsibilities:

3.8.2.1 The Department agrees to be financially responsible for pre-authorized extraordinary medical care provided by the County to Department Offenders that is consistent with this Agreement, the OHP and the Department's prescription formulary.

3.8.2.2 The Department agrees to reimburse the County for emergency medical costs incurred by a Department Offender under the conditions of this Agreement. Emergency medical care costs may include a facility fee, physician services, labs and x-rays. The Department is not obligated to reimburse the County for medical care or treatment provided to a Department Offender without the Department's pre- authorization, or in an emergency within the agreed timeframe specified in paragraph 3.8.1.2.

3.8.2.3 The Department may, at its option, request the return of a Department Offender for medical reasons. The Department's financial responsibilities under this agreement terminate when the Department takes custody of the Offender or when the Department's hold or detainer is no longer valid, whichever is earliest.

3.8.2.4 The Department at its sole discretion may provide Department Offenders prescription medications or, reimburse the County for prescription medications it provides as long as the County provided prescription medications are consistent with the Offender Health Plan and Formulary. Non-Formulary medications must be pre-authorized by the Department's Utilization Management Office. The County may require Department Offenders to submit co-pay for medications.

Section 3.8.3 Safe Transfer of Care

3.8.3.1 The County agrees to consult with a registered nurse at the receiving facility and/or the Department's Utilization Management Office prior to transferring a Department Offender for medical reasons. The County also agrees to consult telephonically with the medical or correctional facility receiving the Offender and agrees to transport with the Offender, any applicable: medical records, and current care instructions, an appropriately labeled 5-day supply of the Offender's current non-controlled substance medications, and any previously issued over-the-counter medication. The medical record shall at a minimum include the Offender's name, DOC number, date of birth, any known allergies, current medication list and description of current medical problem(s), the in facility medical care provided, and the facility health staff contact information.

3.8.3.2 If the County transfers a Department Offender to any other facility, the County agrees to provide a copy of the Department's authorization to hold the Offender to the receiving facility.

3.8.3.3 The Department agrees to transport with the Offender, any applicable: medical records, and current care instructions, an appropriately labeled 5-day supply of the Offender's current non-controlled substance medications, and any previously issued over-the-counter medication. The medical record shall at a minimum include the Offender's name, DOC number, date of birth, any known allergies, current medication list and description of current medical problem(s), the in facility medical care provided, and the facility health staff contact information.

Section 3.8.4 Medical Care Utilization Review: The County agrees to allow the Department and its agents to conduct concurrent and retrospective utilization audits and reviews of any and all medical services provided to Department Offenders. The County agrees that any and all of its medical service contracts will include authorization for Department concurrent and retrospective utilization audits and reviews of any and all medical services provided to Department Offenders.

Section 3.8.5 Medical Billing: County costs incurred for Department Offender medical care not included in the Base Rate Per Diem will be reimbursed by the Department consistent with this Agreement. The County agrees to bill the Department monthly, itemized medical bills should be sent electronically to: DOCHQMedicalRAB@DOC1.WA.GOV. The itemized reimbursement claims must contain the Offender's name and DOC number, attached supporting documentation of the service provided that includes; the date of service, the name of the Practitioner that ordered the service, details of the service/item(s) provided, the prescriptions(s) provided, the facility(s) that provided the service(s). The County agrees to submit itemized billing statements electronically to the Department for reimbursement and data collection purposes.

The County also agrees to submit itemized bills for medical services as soon as possible but in no event later than six (6) months after the date of service.

Section 3.9 **Notification of Release Date.** The Department agrees to calculate Department Offender's release date and notify, when possible, the Offender of his/her release date. The Department also agrees to notify the County, in writing, of the Department Offender's release date. The County will not release Department Offenders prior to the Department calculated release date. The County also agrees to notify the Department if a Department Offender receives additional confinement or holds from a non-Department jurisdiction(s). The Department will not be responsible for any per diem or medical costs beyond the release date provided to the County. Should the Department Offender be given any other sanction or sentence that is to be run consecutive to the Department's sanction, the Department's sanction time will run before said consecutive local time.

Section 3.10 **Agreement Coordinator.** Each party agrees to identify a coordinator who is responsible for administering the Agreement on behalf of that party. Should the coordinator be absent for an extended period of time, the coordinator shall arrange for, and notify the other party in writing of the alternate contact person during the coordinator's absence.

Section 3.11 **Billing.** The base rate will be eighty ($80.00) dollars per day per Department Offender from date of execution of this contract until June 30, 2013. The base rate will increase on July 1, 2013, to eighty two dollars and forty cents ($82.40) per offender day for the remainder of the contract. The County agrees to bill monthly for the actual bed days used in the preceding month. The County also agrees to submit itemized bills to the Department in electronic spreadsheet format that includes the Offender name, DOC number, Date of Birth, and dates the Offender was held under the Department's authority.

Section 3.12 **Use of Facilities.** The County agrees to provide Department staff and officers suitable facilities for conducting Department Offender hearings and reviews, Monday through Friday during normal business hours, and at other times upon written notice. The room provided must have sufficient space to safely and efficiently conduct Department hearings and reviews. Sufficient space means that the room provided must be of a size sufficient to accommodate at

least three people and must be equipped with overhead lighting, at least one electrical power/outlet, a desk, three chairs, and a working telephone with a line able to dial phone numbers outside the Facility. Where possible the County agrees to provide a means for contacting County staff during the hearing; if a "panic button," or other method is not available, the County agrees to ensure Offenders remain restrained during Department hearings and reviews.

Section 3.13 **Inspections.** The County agrees to allow the Department and its agents to inspect and audit the County's Facility(s) with or without advance notice. The inspection/audit may include, but is not limited to: reviewing expense reports, interviewing Department Offenders and reviewing Department Offender medical records.

Section 3.14 **Offender Programs.** Department Offenders will have the same access to programs provided to inmates housed in the Facility. Should the Department elect to provide additional programs for its Offenders, at its expense, the County agrees to provide workspace to conduct those programs, provided that such space is available and not being used by the County.

Section 3.15 **Orientation.** Upon a Department Offender's arrival at a County Facility, the County agrees to fingerprint, conduct an NCIC check and provide an orientation for the Offender as if the Offender were a County inmate. This orientation must include the County Facility's: 1) Requirements for work; 2) Facility rules and disciplinary procedures; 3) Medical care availability; and 4) Visitation rules. The Department will advise Department Offenders of the requirement to follow the rules of the County Facility.

Section 3.16 **Clothing.**

Section 3.16.1 The County agrees to launder, repair, and replace County-issued clothing during the Department Offender's incarceration at the Facility to ensure clean clothes. The County also agrees to issue a minimum of one (1) set of clothing to each Department Offender upon admission and clean clothing and bedding will be issued to the Department Offender on a weekly basis thereafter.

Section 3.16.2 The County agrees to provide work clothing and equipment appropriate to the Offender's assignment, as if they were County inmates.

Section 3.16.3 The County agrees to furnish Department Offenders with climate appropriate outerwear-comparable to that provided to County inmates.

Section 3.16.4 The County agrees to provide Department Offenders returned to the Department from the County Facility shall have the allotted amount of Offender clothing authorized by the Department.

Section 3.17 **Transferable Items.** The County agrees to provide the Department with a list of allowable items that may be transferred with a Department Offender.

Section 3.18 **Compensation for Work.** The County agrees to provide Department Offenders who participate in County employment the same reimbursement, if any, as County inmates performing similar work.

Section 3.19 **Discipline.** The County may discipline Department Offenders in accordance

with the County's rules and disciplinary procedures. The County agrees to notify the Department as soon as possible but not later than 72 hours after disciplining a Department Offender whose conduct resulted in the Offender receiving County discipline or a referral for charges. In such cases, the Department reserves the right to determine if the Offender's misconduct should also be addressed through the Department's violation and hearing processes. The County reserves the right to refer a Department Offender's misconduct for new charges and the right to move Department Offenders to more secure housing within the Facility consistent with the County's policies, procedures and prudent Facility management practices. The County may require the Department to retake any Offender whose behavior requires segregated or protective housing pursuant to this Agreement. The Department may request a Department Offender be returned to the Department if the Offender's behavior or health requires segregated or protective housing pursuant to this Agreement.

Section 3.20 **Facility Operations.** The County agrees to manage Department Offenders consistent with the management of County inmates and in accordance with the law. The County agrees to maintain staffing levels at the Facility in sufficient numbers and rank to maintain the safety of the public, staff, inmates, and Department Offenders and to reasonably carry out the provisions of this Agreement.

Section 3.21 **Religious Opportunity.** The County agrees to provide Department Offenders the same space and opportunity for religious services as provided to County inmates.

Section 3.22 **Telephone.** The County agrees to provide Department Offenders access to telephone services consistent with telephone services provided to County inmates.

Section 3.23 **Commissary and Mail.** The County agrees to provide Department Offenders commissary and mail services consistent with commissary and mail services provided to County inmates.

Section 3.24 **Offender Funds.** The County agrees to administer Department Offender funds consistent with the fund administration provided to County inmates. If, by mutual agreement, the County agrees to house Department Offenders that are non-violators, the County then agrees to administer Department Offender funds to include the appropriate accounting process to accommodate statutorily mandated deductions.

Section 3.25 **Visitation.** The County agrees to provide Department Offenders visitation opportunities consistent with those that are provided to County inmates.

Section 3.26 **Grievance Procedures.** The County agrees to handle initial Department Offender grievances consistent with the County's grievance procedures. The Department agrees to handle appeals or additional reviews of Department Offender grievances.

Section 3.27 **Access to Courts.** County agrees to provide Department Offenders in County custody under this agreement meaningful access to the courts through: (a) the use of court appointed attorneys to satisfy their Sixth Amendment right to counsel, (b) access to contracted attorneys provided by the Department, or (c) access to legal resource materials at the County Facility. The County also agrees to provide the Offender opportunity to access legal materials at the Facility or his/her attorney in accordance with security and operating needs and consistent with access granted to County inmates.

Section 3.28 **Death of an Offender.** The County agrees to immediately notify the Agreement

Coordinator telephonically of any Department Offender's death. The County also agrees that the Offender's death shall be reviewed by the coroner of the local jurisdiction pursuant County policies and procedures. The County also agrees to provide the Department certified copies of the Department Offender's death certificate, autopsy report, file and medical records.

Section 3.29 **Escape of an Offender.** The County agrees to immediately notify the Agreement Coordinator telephonically if a Department Offender escapes. The County also agrees to immediately notify all local law enforcement agencies.

Article IV
COUNTY EMPLOYEES

Section 4.1 **Independent Contractor.** Each party agrees to perform its duties hereunder as an independent contractor and not as an employee. Neither the County nor any agent or employee of the County shall be deemed to be an agent or employee of the Department. Neither the Department nor any agent or employee of the Department shall be deemed to be an agent or employee of the County. The County agrees to pay, when due, all required employment taxes and income tax withholding including all Federal and State income tax and local head tax on any monies paid pursuant to this Agreement. Neither the County nor the Department shall have authorization, express or implied to bind the other to any agreements, liability or understanding except as expressly set forth herein.

Section 4.2 **Personnel.** The County agrees to retain sufficient personnel to deliver twenty-four (24) hour care and supervision to Department Offenders, consistent with County policy and law, as well as administrative and support service personnel for the overall operation of the Facility. Prior to employment at the Facility, the County agrees to subject all applicants to a thorough background check.

Section 4.3 **Training.** Each Party agrees to train their employees in accordance with its policies and the law. Each Party also agrees to be responsible for all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any action or omission of its employees, agents, subcontractors or assignees incurred in connection with the training.

Article V
PREA - CUSTODIAL AND SEXUAL MISCONDUCT

Section 5.1 This agreement provision shall apply to any person having direct unsupervised contact with Offenders under Department of Corrections (DOC) jurisdiction. This includes, but is not limited to, the County and its employees, all contractors and their employees, vendors and their employees, and volunteers, hereinafter referred to as Contractor in this Article V, only. Electronic access to the documents cited in Section 5.2, below is available from the DOC Agreement Coordinator.

Section 5.2 In the performance of services under this Agreement, Contractors shall comply with all federal and state laws and Department policies regarding sexual misconduct, including, but not limited to, the Prison Rape Elimination Act of 2003 (PREA); RCW 72.09.225, Sexual misconduct by state employees, contractors; RCW 9A.44.010, Definitions; RCW 9A.44.160 Custodial sexual misconduct in the first degree; RCW 9A.44.170, Custodial sexual misconduct in the second degree; DOC 490.800, Prevention and Reporting of Sexual Misconduct; DOC 490.850, Response to Investigation of Sexual Misconduct, and DOC 610.025, Sexual Abuse,

Sexual Assault, and Staff Sexual Misconduct. The Department's PREA Coordinator shall monitor the Contractor's compliance with PREA standards.

Section 5.3 Definitions

Section 5.3.1 Sexual Misconduct includes, but is not limited to, Offender-on-Offender sexual assault, sexual abuse, and consensual sex acts. It also includes Custodial Sexual Misconduct, Custodial Misconduct of a Sexual Nature, and Sexual Harassment as defined below.

Section 5.3.2 Custodial Sexual Misconduct includes, but is not limited to, the following acts directed toward any Offender and performed by Department staff, Contractors, or any other person having direct contact with Offenders under DOC jurisdiction:

Section 5.3.2.1 Sexual intercourse shall include (a) vaginal intercourse, anal intercourse, and oral intercourse as well as the penetration of an Offender's vagina or anus with an object, when such penetration is not performed for the purpose of providing medical care or is not authorized by Department or County policy for the purpose of maintaining security, or (b) allowing an Offender to engage in sexual intercourse, as defined above, with any Contractor.

Section 5.3.2.2 Without a legitimate penological purpose, intentionally physically touching, either directly or through clothing, the genitalia, anus, groin, thighs, or buttocks of an Offender or the breasts of a female Offender.

Section 5.3.2.3 Without a legitimate penological purpose, compelling or permitting an Offender to touch, either directly or through clothing the genitalia, breasts, or buttocks of a Contractor.

Section 5.3.2.4 Kissing an Offender, or allowing oneself to be kissed by an Offender, (this does not include an uninvited surprise kiss by an Offender).

Section 5.3.2.5 Knowingly exposing one's genitals, breasts, or buttocks to an Offender.

Section 5.3.2.6 Observing without legitimate penological purpose an Offender's partially or fully naked body or an Offender engaging in a sexual act with him/herself or another Offender (not to include inadvertent or unavoidable observation).

Section 5.3.2.7 Making threats, bribes, or acts of coercion toward an Offender for the purpose of causing an Offender to engage in any of the acts prohibited in this section.

Section 5.3.2.8 Taking one or more substantial steps toward engaging in or performing any of the acts prohibited in this section.

Section 5.3.2.9 Helping another person perform any of the acts prohibited in this

section by acting or failing to act to aid in the commission of such act, with the knowledge that the action or inaction will promote or facilitate the prohibited act.

Section 5.4 Custodial Misconduct of a Sexual Nature includes but is not limited to:

Section 5.4.1 Contractor-on-Offender sexual harassment; inappropriate relationships; exchange of personal information or items of financial or sentimental value; threatening, intimidating, coercing, or using abusive language towards an Offender for other than legitimate corrections purposes; cross gender pat searches; and

Section 5.4.2 Failing to report suspected or known sexual misconduct or other acts prohibited by this Agreement provision; and discouraging, preventing, or otherwise interfering with good faith reporting of sexual misconduct where an Offender is the alleged victim.

Section 5.5 Sexual Harassment includes, but is not limited to:

Section 5.5.1 Making comments about an Offender's body intended to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person present; and

Section 5.5.2 Making other gender-based sexually oriented or demeaning statements or gestures.

Section 5.6 Contractor Requirements include, but are not limited to:

Section 5.6.1 Adhering to the DOC zero tolerance standard for sexual misconduct, whether or not consensual.

Section 5.6.2 Maintaining boundaries and professionalism at work and when in direct contact with Offenders.

Section 5.6.3 Ensuring that all Contractors, who have unsupervised access to Department Offenders, have PREA/Sexual Misconduct training that includes:

Section 5.6.3.1 Department policies on Prevention and Reporting of Sexual Misconduct, DOC 490.800 and Response to Investigation of Sexual Misconduct, DOC 490.850;

Section 5.6.3.2 The meaning of Department jurisdiction;

Section 5.6.3.3 The prohibitions against engaging in behaviors described in Section 5.3, Definitions, above;

Section 5.6.3.4 Signs of sexual misconduct in both victims and predators;

Section 5.6.3.5 Reporting requirements and investigation procedures for suspected or known instances of sexual misconduct;

Section 5.6.3.6 The resources available to Offender/victims of sexual misconduct;

Section 5.6.3.7 The confidentiality requirements associated with assisting Offender/victims; and

Section 5.6.3.8 The consequences of failing to conform to all requirements of this Section, which include, but are not limited to:

Section 5.6.3.8.1 Removal of person(s) from proximity to Offenders;

Section 5.6.3.8.2 Removal of person(s) from working for the County;

Section 5.6.3.8.3 Termination of this Agreement;

Section 5.6.3.8.4 Criminal and/or civil prosecution;

Section 5.6.3.8.5 Liability for damages to the Offender/victim.

Article VI
INDEMNIFICATION

Section 6.1 The County agrees to indemnify and hold harmless the Department and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of the County, its officers, agents, employees, vendors and volunteers or any of them related to the services provided under this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Department, the County agrees to defend the same at its sole cost and expense; provided, that, the Department retains the right to participate in said suit if any principle of governmental or public law is involved. Said participation shall not compromise the ability of the County to settle the suit if it deems that course advisable. If final judgment be rendered against the Department, its officers, agents, and employees, or any of them, or jointly against the Department and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

Section 6.2 The Department agrees to indemnify and hold harmless the County and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the Department, its officers, agents, and employees, or any of them related to the services provided under this agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the Department agrees to defend the same at its sole cost and expense; provided that the County retains the right to participate in said suit if any principle of governmental or public laws is involved. Said participation shall not compromise the ability of the "Department" to settle the suit if it deems that course advisable. If final judgment is rendered against the County, its officers, agents, and employees, or any of them, or jointly against the County and the Department and their respective officers, agents, and employees, or any of them, the Department agrees to satisfy the same.

Section 6.3 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the Department from any liability or responsibility, which arises in whole or in part from the existence or effect of Department rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability

and/or validity of any such Department rule or regulation is at issue, the Department agrees to defend the same at its sole expense and if judgment is entered or damages are awarded against the Department, the County, or both, the Department shall satisfy the same, including all chargeable costs and attorney's fees.

Section 6.4 In executing this Agreement, the Department does not assume liability or responsibility for or in any way release the County from any liability or responsibility, which arises in whole or in part from the existence or effect of County rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such County rule or regulation is at issue, the County agrees to defend the same at its sole expense and if judgment is entered or damages are awarded against the County, the Department, or both, the County shall satisfy the same, including all chargeable costs and attorney's fees.

Article VII
MISCELLANEOUS

Section 7.1 **Existing State Law.** This Agreement shall not be construed to alter the legal responsibilities of the County or the Department with regard to the legal and fiscal responsibility for confinement, care, and treatment of Department Offenders under state law.

Section 7.2 **Disputes.** Disputes between the parties may be submitted to arbitration if the parties are unable to resolve any disputes arising hereunder through conference. No disputes may be submitted to arbitration without the agreement of both parties. Nothing in this section is intended to limit either party access to any and all courts of law of this state or country.

Section 7.3 **Equal Employment Opportunity.** The parties ascribe to the principles of equal employment opportunity. Neither is responsible for ensuring that the other is in compliance with equal employment statutes or policies.

Section 7.4 **Invalidity and Severability.** To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are several and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. In the event that any provision of this Agreement is held invalid, that provision shall be null and void. However, the validity of the remaining provisions of the Agreement shall not be affected thereby.

Section 7.5 **Jurisdiction and Venue.** The laws of the State of Washington and the rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Agreement. Venue for any legal action related to the performance or interpretation of this Agreement shall be in the Superior Court in Thurston County, Washington.

Section 7.6 **Scope of Agreement.** This Agreement and any appendices or exhibits to it incorporate all the agreements, covenants, and understandings between the parties. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not be altered, changed, or amended except by mutual consent of the parties in writing.

Section 7.7 **Compliance with Applicable Laws.** The parties agree at all times during the performance of their obligations of this Agreement, to strictly adhere to all applicable federal and

state laws and regulations.

IN WITNESS WHEREOF, the undersigned duly authorized officers have subscribed their names on behalf of the State of Washington and the County of Pacific.

PACIFIC COUNTY
SHERIFF'S OFFICE

9-6-12
Scott Johnson, Sheriff DATE

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

9/10/12
Bernard Warner, Secretary DATE

BOARD OF COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Lisa Ayers, Chair

Beverly Olson, Commissioner

Norman "Bud" Cuffel, Commissioner

ATTEST:

8/28/12
Kathy Noren, Clerk of the Board DATE
Deputy

Approved as to Form Only:
Timothy Lang, Assistant Attorney
General on February 8, 2012