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OFFICE OF THE CITY CLERK
OAKLAND

2014 SEP 18 PM 1:13 **AGENDA REPORT**

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Sean Whent

SUBJECT: MOU between Alameda County
Health Care Services Agency and OPD

DATE: September 8, 2014

City Administrator
Approval

Date

9-16-14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution Authorizing The City Administrator, Or Designee, To Enter Into An Intergovernmental Memorandum Of Understanding (MOU) Between the Alameda County Health Care Services Agency, Behavioral Health Care Services (BHCS) and the Oakland Police Department (OPD) to Implement a Six Month Pilot Program Called the Mobile Evaluation Team (M.E.T.).

OUTCOME

The M.E.T. will partner a Crisis Intervention Trained (C.I.T.) Oakland Police Officer and a licensed clinical social worker, who will respond as a unit to emergency and non-emergency requests, at the direction of OPD Communications Section, to psychiatric or emotional crisis calls for service, including "suicide / attempted suicide," "evaluations" and "well checks," with the intent to provide on-scene crisis intervention, evaluation and resource referral. The unit will be available to respond citywide, but will concentrate its efforts in East Oakland.

The M.E.T.'s goal is to avoid the use of an involuntary psychiatric hospitalization, when appropriate, by providing alternative treatment resources. These resources may include consultation, crisis intervention, and/or a referral for brief treatment and/or diversion to other appropriate voluntary crisis services, as available.

Approval of the resolution will authorize a partnership wherein OPD shall provide BHCS with a C.I.T. police officer and an unmarked police vehicle specifically designated for the implementation of the pilot program, which upon approval is set to begin in October 2014.

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Public Safety Committee
September 30, 2014

BACKGROUND / LEGISLATIVE HISTORY

Alameda County has one of the highest involuntary psychiatric commitment (CA WIC §5150¹) rates in California, with a majority of its cases coming from Oakland. Emergency (9-1-1) calls for service and potential commitments in these cases are not only traumatic for the individual(s) in crisis and their families, but also complex in nature and place a significant burden on OPD's Patrol Division.

In order to reduce calls for service and to increase safety and quality of service for individuals and families involved in a psychiatric crisis, a number of California Police Departments – including Long Beach, Burbank (*Attachment A*), Los Angeles and Orange County – have implemented a mobile mental health evaluation team model. This cooperative model (which OPD and BHCS will replicate) revolves around a co-response model that includes a licensed clinical social worker, provided by the county department of mental health, and a sworn police officer, assigned by the local police department. The partnership creates a synergistic team that combines the expertise and resources of both agencies to provide services that are currently unavailable to the Oakland community.

OPD staff have been working with BHCS staff for the past year to develop a pilot plan for implementation, including creation of an MOU and execution of a Health Insurance Portability and Accountability Act (HIPAA) Business Agreement (*Attachments B and C*, respectively), which identify programmatic roles and responsibilities as well as data-sharing agreements.

ANALYSIS

A partnership with BHCS benefits OPD by providing needed crisis, resource and referral services that have the potential to reduce calls for service and create a safer environment for the officer and clinician responding to calls through the use of de-escalation and consultation expertise. By reducing the number of calls for service, OPD will be able to focus more time on other (non-psychiatric) calls and assignments.

¹ **CA Welfare and Institutions Code (WIC) §5150.** (a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis. Crisis intervention, as defined in subdivision (e) of Section 5008, may be provided concurrently with assessment, evaluation, or any other service.

Approval of the resolution will provide multiple benefits to the City, including an increase in access to mental health services for City residents, especially those in East Oakland. In addition, the M.E.T. pilot program will provide an improved quality of service and increased level of safety in interactions with individuals experiencing a psychiatric crisis, and their families/caregivers.

The partnership benefits Alameda County's BHCS by strengthening its collaborative relationship with OPD and provides an added resource to the community it serves - the severely and persistently mentally ill. Another goal of the pilot program is to not only provide crisis intervention services, but to identify individuals who are already BHCS clients and re-link or re-engage them in treatment services, so as to reduce the number of mental health episodes for individuals who are already BHCS clients.

PUBLIC OUTREACH/INTEREST

Discussions have been held with BHCS leadership and its stakeholder groups (mental health consumers and family members) concerning the formation of the pilot M.E.T. program. This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

The Office of the City Attorney and the Budget Office were consulted in the preparation of this report.

COST SUMMARY / IMPLICATIONS

For this pilot program, OPD will provide the full time equivalent of one (existing) sworn police officer and one unmarked police vehicle, including gas and maintenance. The City is not obligated to incur any additional costs under the MOU or pilot program.

The estimated cost to the City for its in-kind contribution for this six-month program is \$74,214.44 for a full-time Police Officer (based on a Step 3 annual FY14-15 Salary and Benefits of \$148,428.89) (General Fund 1010, Training Org. 103430) and an unmarked police vehicle \$12,000 (based on an annual approximate cost of \$23,655 with fuel and maintenance). Alameda County Health Care Services Agency, Behavioral Health Care Services (BHCS) will provide a full-time licensed clinical social worker (approximately \$200,000 for 6-months) and administrative time for billing and processing.

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SUSTAINABLE OPPORTUNITIES

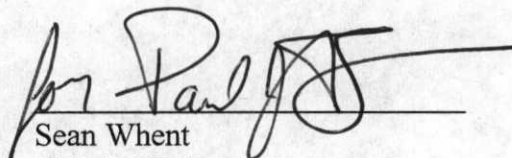
Economic: If the pilot program is successful, OPD will see a decrease in the number of psychiatric crisis calls for service and/or decrease the amount of wait time a patrol officer needs to spend evaluating an individual.

Environmental: No environmental opportunities have been identified.

Social Equity: The development of this new partnership between OPD and BHCS will produce various benefits to both agencies and the greater community, including increased understanding of both clinical and law enforcement roles and responsibilities, increased mental health resources, new partnership opportunities and improved quality of service for those individuals who experience mental health challenges and their families.

For questions regarding this report, please contact Officer Doria Neff, OPD Mental Health Liaison, at 510-238-3552.

Respectfully submitted,


Sean Whent
Chief of Police

Prepared by:
Officer Doria Neff
Training Section
Oakland Police Department

Attachment A – Burbank Mental Health Evaluation Team: A Co-Response Model to the need for Mental Health Services in the Community (Community Policing Dispatch; The e-newsletter of the COPS Office | Volume 7 | Issue 2 | February 2014)

Attachment B – MOU Between Alameda County Health Care Services Agency, BHCS and the City of Oakland Police Department.

Attachment C – HIPAA Business Agreement between Alameda County Health Care Services Agency Behavioral Health Care Services and the Oakland Police Department.

- Resolution

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Burbank Mental Health Evaluation Team: A Co-Response Model to the Need for Mental Health Services in the Community



In May 2012 the Burbank (California) Police Department launched the Burbank Mental Health Evaluation Team (MET) in order to address the growing need for mental health services in their community. The development of this team came in response to the findings of a research study that evaluated the number of 5150 WIC (involuntary psychiatric commitments) and mental health interventions between 2008 and 2012 in Burbank. The study found an increase from 298 interventions in 2008 to 567 in 2012; a 193 percent increase. This substantial increase in calls for service and time spent on these often complex situations was putting a large burden on the patrol division.

In an effort to provide mental health services to this growing number in need, and to positively affect the community, the Burbank Police Department partnered with the Los Angeles County Department of Mental Health (LACDMH) to create MET. The cooperative effort revolved around a co-response model that includes a licensed clinical social worker—provided by the LACDMH—and a sworn police officer—provided by the Burbank Police Department. The partnership created a synergistic team that combines the expertise and resources of both agencies to provide services that were previously unavailable to the Burbank community.

MET had an immediate impact on those requiring mental health services, while also allowing patrol officers to return to their regular duties more often. From May 1, 2012 through May 1, 2013, MET managed 244 mental health interventions requiring both an evaluation and subsequent transportation to a mental health facility. During the same period, the Burbank Police Department managed a total of 567 interventions. An analysis of the data indicated MET managed 43 percent of the total interventions during the year while working only 21 percent of the total hours, proving MET to be effective and efficient.

Although responding to critical incidents is a major component of MET's responsibilities, the team expanded its scope to address crisis situations and homeless outreach for individuals with mental health challenges throughout the community. Further, MET is providing extensive follow up and case management for individuals with chronic mental illness, substance abuse, homelessness, and criminal history. By addressing these concerns on a daily basis, MET has alleviated the burden placed on patrol resources by this growing portion of the population and provided expert assistance to those in need.

MET utilizes the resources of the City of Burbank as well as the Los Angeles County Department of Mental Health to coordinate solutions for those with mental illness. Burbank clients and their families now have access to consultations, referrals, and outpatient mental health programs within the entire county of Los Angeles.

As MET progressed during its inaugural deployment, they garnered expertise in the mental health issues facing the Burbank community and determined a criminal element with mental health underpinnings was not being addressed by the agency. MET utilized a partnership with the Burbank City Attorney's Office to find solutions to habitual offenders and to target problem areas within the city.

While MET has acted as a first responder to those in a mental health crisis, a major component of the team's focus has been to conduct follow-up interactions with those requiring mental health services. Police agencies often triage a mental health crisis but have not been equipped to provide secondary or long term care. During their short existence, MET has conducted 321 follow-up interactions with those who have contacted the Burbank Police Department regarding mental health issues. MET has provided counseling, referral services, and other expertise to the clients and families of those suffering from mental illness. To further provide services to the community and guidance to the first responders, the team is available on a 24/7, on call basis, to deliver phone consultations in crisis situations.

While MET's positive effect on the Burbank community and police department has been overwhelming, MET has also provided benefits to the mental health community, county services, and other police agencies. The utilization of private hospital facilities, as well as private transportation agencies has provided much needed relief to the overburdened county mental health system. This has helped lessen the impact of the Burbank Police Department's on county mental health services by over 30 percent. It is believed that continued long term relief on the system will ultimately result in better care for someone requiring mental health treatment and will positively impact the Burbank Police Department's interaction with the mental health community.

As the success of MET radiated through the Burbank community, the requests for assistance and training became abundant. As a result, MET has provided training to their entire department in handling incidents with mental health underpinnings. In an effort to further enhance the positive effects on the community, MET has coordinated with the Burbank School District, several local non-profit organizations, and senior citizen organizations to elevate the level of service they provide to those suffering from mental illness as well as to provide training. As an agency that strives to work with the community, MET has embedded within these organizations to assist and provide guidance as they partner to assist those suffering from mental health issues.

The continued reduction in mental health services is requiring the law enforcement community to take a greater role in helping those with mental illness. Within its first year, MET returned benefits beyond the goals established by the department and city. The number of calls for services managed by MET, the impact on habitual offenders, and the ability to partner with other agencies in the community have not only exceeded the original expectations for the program, but have demonstrated clear and evident benefits to the community as a whole.

For more information on Burbank's Mental Health Evaluation Team, please visit

www.burbankpd.org/specialized-units/mental-health-evaluation-team/. (OPD date checked: 9/2/14)

Sergeant Mike Parrinello
Burbank Police Department

Captain Mike Albanese
Burbank Police Department

In Collaboration with Jessica Mansourian, The COPS Office

Memorandum of Understanding (MOU)

between

Alameda County Behavioral Health Care Services

and

City of Oakland Police Department

This is an agreement between Alameda County Behavioral Health Care Services ("BHCS"), an agency of the County of Alameda ("County"), and the City of Oakland, Police Department, ("OPD").

Whereas in fiscal year 2013 BHCS was allocated \$250,000 in Measure A funding to plan and implement with OPD a Mobile Evaluation Team (MET) pilot project;

Whereas BHCS Crisis Response Program (CRP) will partner with OPD in a pilot project to provide a mobile evaluation service (MET) team that will respond together as a unit to 911 requests regarding a psychiatric or emotional crisis (5150 calls for service);

Whereas the MET team will operate with the goal of avoiding the use of involuntary psychiatric hospitalization when appropriate by providing alternative treatment resources which may include consultation, crisis intervention, and referral to brief treatment and/or diversion to other voluntary crisis services as available.

Now, therefore, BHCS and OPD agree to the following:

I. Term

- a. The term of this agreement shall be from September 23, 2014 to March 30, 2015.

II. Purpose and Scope

The purpose of this MOU is to clearly identify the roles and responsibilities of each party as they relate to the implementation of the Mobile Evaluation Team (MET) program between BHCS and OPD.

No relationship of employer and employee is created by this Agreement between BHCS or County or their personnel and OPD or City or their personnel, it being understood that the OPD and BHCS shall act hereunder as independent Agencies, who will each follow its own policies, procedures and guidelines currently in effect.

In particular this MOU is intended to establish a procedural and programmatic working relationship between BHCS and OPD for the development and implementation of the MET pilot program.

Primary function of Mobile Evaluation Team (MET): A BHCS mental health professional from CRP will be partnered with an OPD officer to create a "team" that would provide on-scene crisis intervention and referral. This MET team will ride together in an unmarked patrol car to various 5150 calls for service in the City of Oakland. Each team member will auto liability and general insurance through his/her respective employer in case of car accidents or other vehicular issues.

Secondary function: When time allows, the MET team will conduct outreach work with known individuals who have recently had a 5150 hold placed and/or to high risk populations, such as the homeless, who may be in need of crisis intervention or a referral for other community services.

Catchment Area for Services: The area of services to be provided under this agreement shall be the entire City of Oakland, with an emphasis on East Oakland (loosely defined as east of Fruitvale Ave in Oakland out to the San Leandro border also referred to as Bureau of Field Operations [BFO] Police Areas 4 & 5.

1. Hours of operation: The MET team shall operate from Tuesday through Friday, with the MET officer's hours being 7:00am-5:00pm and the MET clinician working 8:00am-6:00pm with the operational hours, i.e. when the team is in the field, from 8:00am-4:00pm

MET Team Operating Procedures:

1. The MET team will be based out of the Alameda County Behavioral Services North County Crisis Response Office, Eastmont Town Center at 7400 Bancroft Ave Ste 125A, Oakland, CA 94605
2. If the MET OPD officer is not available for the shift due to illness or planned leave, the CRP MET staff will be assigned other crisis intervention duties for the day within the CRP program and the MET team will not be in service.
3. In the event the designated CRP MET staff is not available for the shift due to illness or planned leave, the MET team officer will still function as a designated officer for crisis intervention calls for service and will consult with the CRP Mobile Crisis Team, (which has the OPD identified call sign of 37C51-OPD) as needed. The MET team officer will continue to provide crisis services primarily in East Oakland.
4. The MET team will primarily respond to dispatch calls for Patrol Area 4 & 5 (East Oakland), while the CRP Mobile Crisis Team (37C51-OPD) continues their focus in Downtown Oakland, Patrol Areas 1 & 2.
5. If *either* of the MET team staff (clinician or officer) feel the individual in crisis meets the California Welfare and Institutions Code Section 5150 for an involuntary psychiatric hold ("5150 hold"), the team will place the individual on a 5150 hold. For any disagreements between the MET team clinician and officer regarding the decision to place a 5150 hold the team will call the CRP supervisor for consultation. The CRP supervisor will be available during the MET Team's shift for consultation and support.
6. If a 5150 hold is placed on an individual by either member of the Team the individual will always be transported by ambulance following protocols developed by the Alameda County Emergency Medical Services (EMS) department.
7. Individuals who have been evaluated may be transported in the back of the MET vehicle (if secure with cage) to voluntary alternative resources such as Sausal Creek if it is determined to be safe.
8. The CRP staff member and the OPD officer will report any issue of concern or complexity directly to their respective supervisors as needed. It is expected the MET team will work collaboratively and generally work together to address day-to-day issues. The CRP supervisor will be available by phone throughout the MET shift for consultation.
9. In the event of a major OPD deployment during MET field hours, OPD shall return the CRP staff member of the MET team to the North County Crisis office or arrange for the CRP staff member of the MET team to be picked up by the 37C51 unit at a safe location.

10. The MET team will ride in a caged, unmarked OPD vehicle driven by the OPD officer.

Training:

1. Both MET team members will complete the Crisis Intervention Training (CIT) that is facilitated by OPD. They will additionally participate in other relevant trainings as identified.
2. The MET team will participate in monthly CRP North County staff meetings along with the Mobile Crisis Team (37C51) to discuss common areas of concern in providing field based crisis intervention services. The MET team shall attend other consultation meetings and supervision specific to the MET team as arranged by BHCS and OPD.

II. BHCS Responsibilities under this MOU

BHCS will:

- Meet and confer on a regular basis with a representative designated by OPD to discuss the implementation and ongoing oversight of the MET Team pilot program.
- Jointly develop, with OPD, a set of policy and procedure guidelines for this project.
- Utilize a mental health clinician (Behavioral Health Clinician II, MFT II, or Clinical Psychologist) to serve as the mental health clinician team member.
- Share, as needed and if available, mental health protected health information on the individual being served through this crisis intervention service, consistent with applicable health privacy laws including the Health Insurance Portability and Accountability Act ("HIPAA"). The rules and restrictions around sharing this information are outlined in the HIPAA Business Associate Agreement attached hereto as Exhibit A.
- Provide the OPD member of the MET team with information that may assist in the crisis intervention calls for service. Information may include but is not limited to mental illness diagnosis and history, current psychiatric medications and side effects, and potential de-escalation strategies.
- Complete all clinical documentation of the crisis intervention service in relation to billing paperwork.
- Complete the BHCS 5150 hold paperwork associated with each crisis intervention call the unit responds to, as needed. It will be up to the discretion of the MET team to decide who will write the 5150 hold paperwork since both the clinician and the officer have the legal ability to do so.
- Provide clerical support for the MET team clinician including data entry for billing of services into the BHCS computer system, data entry into the BHCS contact tracking log for counts of contacts and non-billable services, scanning of all 5150 forms into CRP files etc. It's anticipated that current CRP clerical staff will be able to incorporate these activities into their existing clerical duties since they already perform these duties for the Mobile Crisis Team.
- The CRP member of the MET team will record and document both billed and non-billed services following the guidelines set forth in the CRP Policy and Procedure Manual section entitled "*Clinical Recording*" which includes instruction specific to Mobile Crisis Team services and 5150 hold applications.

III. OPD Responsibilities under this MOU

OPD will:

- Meet and confer on a regular basis with a representative designated by BHCS to discuss the implementation and ongoing oversight of the MET Team pilot program.
- Jointly develop, with BHCS, a set of policy and procedure guidelines for this project.
- Provide a dedicated, uniformed Crisis Intervention Trained (CIT) police officer to serve as the law enforcement member of the MET Team.
- Provide and drive one unmarked police vehicle, preferably with a secured/caged back seat, to be used for the MET Team.
- Complete all law enforcement documentation including but not limited to field interview reports and stop data reports. These two listed reports provide in-depth information on the reason and description for stopping an individual and the result of the stop.
- Complete the OPD involuntary hold (5150) paperwork associated with each crisis intervention call the unit responds to, as needed.
- Send an additional police cover unit to each call for service that the MET Team responds to in order to provide safety and security to the crisis scene. The cover unit will stay on scene until OPD deems it safe and then will leave the MET team to handle the crisis situation.

IV. Indemnification

Notwithstanding any other provision of this MOU, each party shall indemnify and hold harmless the other party, and each party's respective Councilmember's or Board members, officers, agents, and employees (each of which persons and organizations are referred to collectively as "Indemnitees" or individually as "Indemnatee") from and against any and all liabilities, claims, lawsuits, losses, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorney's fees) caused or arising out of any:

1. Act or failure to act in the course of performance under this MOU;
2. Negligent or willful acts or omission in the course of performance of this MOU;

V. Timeframe for Implementation

The MET pilot program will begin services in early fall 2014 and will run for six months. Evaluation of the progress and success of the program will begin three months after implementation. If the program is seen to be successful and there are unused Measure A funds from the original \$250,000 then the pilot will continue until the end of FY 14/15 (June 30, 2015).

VI. Notice

Each of the parties to this agreement shall immediately notify the other of any litigation or claim asserted by or against either party regarding this agreement.

All cancellation and other notices hereunder to BHCS shall be made to:

Manuel Jimenez Jr., Director
Alameda County Behavioral Health Care Services
2000 Embarcadero Cove #400
Oakland, CA 94606
(510) 567-8100

All cancellation and other notices hereunder to OPD shall be made to:

Chief of Police, Sean Whent
455 7th St
Oakland, CA 94607
Telephone (510) 238-3365

Notices shall be given during business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

VII. Integration

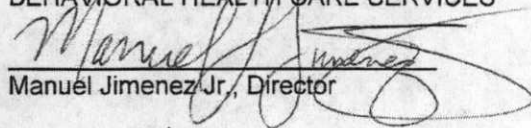
This agreement represents the entire and integrated agreement between the parties. It is expressly agreed that all the terms and conditions of this agreement are included herein and no verbal agreements of any kind shall be binding upon the parties. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

VIII. Severability

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

IN WITNESS THEREOF, the parties have executed this agreement on the dates as set forth hereinafter.

ALAMEDA COUNTY
BEHAVIORAL HEALTH CARE SERVICES


Manuel Jimenez Jr., Director

Date: 8/20/14

CITY OF OAKLAND

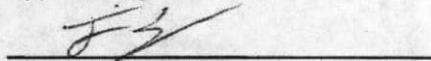
Chief of Police

Date: _____

Henry Gardner, Interim City Administrator

Date: _____

Approved by:



County Counsel
F Kan

Approved by:

City Attorney

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, HIPAA Business Associate Agreement ("Business Associate Agreement") supplements and is made a part of the underlying agreement ("Agreement") by and between the County of Alameda, Behavioral Health Care Services ("County" or "Covered Entity") and the Oakland Police Department ("Contractor" or "Business Associate") to which this Business Associate Agreement is attached. This Business Associate Agreement is effective as of the effective date of the Agreement.

I. Recitals

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI");

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement 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 (the "HITECH Act"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), and other applicable laws; and

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

II. Standard Definitions

Capitalized terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms are defined in the HIPAA Regulations. In the event of an inconsistency between the provisions of this Business Associate Agreement and the mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Business Associate Agreement are different than those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Business Associate Agreement shall control. All regulatory references in this Business Associate Agreement are to HIPAA Regulations unless otherwise specified.

The following terms used in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Regulations: Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Health Plan, Individual, Limited Data Set, Marketing, Minimum Necessary, Minimum Necessary Rule, Protected Health Information, and Security Incident.

The following term used in this Business Associate Agreement shall have the same meaning as that term in the HITECH Act: Unsecured PHI.

III. Specific Definitions

Agreement. "Agreement" shall mean the underlying agreement between County and Contractor, to which this Business Associate Agreement, HIPAA Business Associate Agreement, is attached.

Business Associate. "Business Associate" shall generally have the same meaning as the term "business

associate” at 45 C.F.R. section 160.103, the HIPAA Regulations, and the HITECH Act, and in reference to a party to this Business Associate Agreement shall mean the Contractor identified above. “Business Associate” shall also mean any subcontractor that creates, receives, maintains, or transmits PHI in performing a function, activity, or service delegated by Contractor.

Contractual Breach. “Contractual Breach” shall mean a violation of the contractual obligations set forth in this Business Associate Agreement.

Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. section 160.103, and in reference to the party to this Business Associate Agreement, shall mean any part of County subject to the HIPAA Regulations.

Electronic Protected Health Information. “Electronic Protected Health Information” or “Electronic PHI” means Protected Health Information that is maintained in or transmitted by electronic media.

Business Associate Agreement. “Business Associate Agreement” shall mean this HIPAA Business Associate Agreement.

HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

HIPAA Breach. “HIPAA Breach” shall mean a breach of Protected Health Information as defined in 45 C.F.R. 164.402, and includes the unauthorized acquisition, access, use, or Disclosure of Protected Health Information which compromises the security or privacy of such information.

HIPAA Regulations. “HIPAA Regulations” shall mean the regulations promulgated under HIPAA by the U.S. Department of Health and Human Services, including those set forth at 45 C.F.R. Parts 160 and 164, Subparts A, C, and E.

HITECH Act. “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”).

Privacy Rule and Privacy Regulations. “Privacy Rule” and “Privacy Regulations” shall mean the standards for privacy of individually identifiable health information set forth in the HIPAA Regulations at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

Secretary. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his or her designee.

Security Rule and Security Regulations. “Security Rule” and “Security Regulations” shall mean the standards for security of Electronic PHI set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, Subparts A and C.

IV. Permitted Uses and Disclosures of PHI By Business Associate

Except as otherwise stated in this Business Associate Agreement, Business Associate may only use or disclose PHI as necessary to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or Disclosure would not violate the Privacy Rule if done by Covered Entity.

V. Protection of PHI By Business Associate

- A. *Scope of Business Associate Agreement.* Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created or received by Business Associate on Covered Entity's behalf, shall be subject to this Business Associate Agreement.
- B. *Ownership Rights.* Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI covered by this Business Associate Agreement.
- C. *PHI Disclosure Limits.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the HIPAA Regulations, this Business Associate Agreement, or as required by law. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Regulations if done by Covered Entity.
- D. *Minimum Necessary Rule.* When the HIPAA Privacy Rule requires application of the Minimum Necessary Rule, Business Associate agrees to use, disclose, or request only the Limited Data Set, or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, Disclosure, or request. Business Associate agrees to make uses, Disclosures, and requests for PHI consistent with Covered Entity's Minimum Necessary policies and procedures.
- E. *Safeguards.* Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Rule and HIPAA Security Regulations with respect to Electronic PHI, to prevent the use or Disclosure of the PHI other than as provided for by this Business Associate Agreement.
- F. *Mitigation of Harmful Effects.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or Disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement. Mitigation includes, but is not limited to, the taking of reasonable steps to ensure that the actions or omissions of employees or agents of Business Associate do not cause Business Associate to commit a Contractual Breach.
- G. *Notification of Breach.* During the term of the Agreement, Business Associate shall notify Covered Entity as soon as reasonably possible of any suspected or actual breach of security, intrusion, HIPAA Breach, and/or any actual or suspected use or Disclosure of data in violation of any applicable federal or state laws or regulations. This duty includes the reporting of any Security Incident, of which it becomes aware, affecting the Electronic PHI. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized use or Disclosure required by applicable federal and/or state laws and regulations. Business Associate shall investigate such breach of security, intrusion, and/or HIPAA Breach, and provide a written report of the investigation to Covered Entity's HIPAA Privacy Officer within fifteen (15) working days of the discovery of the breach or unauthorized use or Disclosure at:

HIPAA Privacy Officer

Gary Spicer Alameda County Health Care Services Agency, Compliance Director

2000 Embarcadero, Ste 400, Oakland, California 94606

- H. *Breach by Covered Entity.* Pursuant to 42 U.S.C. section 17934(b), if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material Contractual Breach or violation of Covered Entity's obligations under the Agreement or other arrangement, Business Associate must take reasonable steps to cure the Contractual Breach or end the violation. If the steps are unsuccessful, Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary.
- I. *Agents.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply through this Business Associate Agreement to Business Associate with respect to such information. Business Associate shall obtain and provide to Covered Entity written contracts agreeing to such terms from all subcontractors. Any subcontractor who contracts for another company's services with regards to the PHI shall likewise obtain and provide to Covered Entity written contracts agreeing to such terms. Neither Business Associate nor any of its subcontractors may subcontract with respect to this Business Associate Agreement without the advanced written consent of Covered Entity.
- J. *Right to Review Practices, Books, and Records.* Business Associate agrees to make internal practices, books, and records relating to the use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. Business Associate agrees to make copies of its HIPAA training records available to Covered Entity at the request of Covered Entity.
- K. *Compliance with the HIPAA Regulations when Performing Covered Entity's Obligations.* To the extent Business Associate is required to carry out one or more of Covered Entity's obligations under the HIPAA Regulations, Business Associate must comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligations.
- L. *De-identification of PHI.* Unless otherwise agreed to in writing by both parties, Business Associate and its agents shall not have the right to de-identify the PHI. Any such de-identification shall be in compliance with 45 C.F.R. sections 164.502(d) and 164.514(a) and (b).
- M. *Material Contractual Breach or Violation.* Business Associate understands and agrees that, in accordance with the HITECH Act and the HIPAA Regulations, it will be held to the same standards as Covered Entity to rectify a pattern of activity or practice that constitutes a material Contractual Breach or violation of the HIPAA Regulations. Business Associate further understands and agrees that: (i) it will also be subject to the same penalties as a Covered Entity for any violation of the HIPAA Regulations, and (ii) it will be subject to periodic audits by the Secretary.
- N. *Rules Promulgated by the Secretary.* Business Associate understands and agrees that the Secretary will adopt rules and/or provide further guidance regarding various aspects of the

HIPAA Regulations. Business Associate agrees to comply with any such rule and/or guidance provided by the Secretary when it becomes effective.

VI. Termination

- A. *Termination for Cause.* A Contractual Breach by Business Associate of any provision of this Business Associate Agreement, as determined by Covered Entity in its sole discretion, shall constitute a material Contractual Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. Contracts between Business Associates and subcontractors are subject to the same requirement for Termination for Cause.
- B. *Termination due to Criminal Proceedings or Statutory Violations.* Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- C. *Return or Destruction of PHI.* In the event of termination for any reason, or upon the expiration of the Agreement, Business Associate shall return or, if agreed upon by Covered Entity, destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. Miscellaneous

- A. *Disclaimer.* Covered Entity makes no warranty or representation that compliance by Business Associate with this Business Associate Agreement, HIPAA, the HIPAA Regulations, or the HITECH Act will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate is or will be secure from unauthorized use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Current Law.* A reference in this Business Associate Agreement to a section in HIPAA, the HIPAA Regulations, or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
- C. *Amendments.* The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the

requirements of HIPAA, the HIPAA Regulations, and the HITECH Act.

- D. *Survival.* The respective rights and obligations of Business Associate with respect to PHI in the event of termination, cancellation or expiration of this Business Associate Agreement shall survive said termination, cancellation or expiration of this Business Associate Agreement, and shall continue to bind Business Associate, its agents, employees, contractors and successors.
- E. *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 the Agreement or Business Associate Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- F. *No Third Party Beneficiaries.* Except as expressly provided herein or expressly stated in the HIPAA Regulations, the parties to this Business Associate Agreement do not intend to create any rights in any third parties.
- G. *Governing Law.* The provisions of this Business Associate Agreement are intended to establish the minimum requirements regarding Business Associate's use and Disclosure of PHI under HIPAA, the HIPAA Regulations and the HITECH Act. The use and Disclosure of individually identified health information is also covered by applicable California law, including but not limited to the Confidentiality of Medical Information Act (California Civil Code section 56 *et seq.*). To the extent that California law is more stringent with respect to the protection of such information, applicable California law shall govern Business Associate's use and Disclosure of confidential information related to the performance of this Business Associate Agreement.
- H. *Interpretation.* Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HIPAA Regulations, the HITECH Act, and in favor of the protection of PHI.

This Business Associate Agreement is hereby executed and agreed to by **CONTRACTOR:**

Name: _____

By (Signature): _____

Print Name: _____

Title: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

Priscilla Hynes
City Attorney's Office

2014 SEP 18 PM 1:13

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO ENTER INTO AN INTERGOVERNMENTAL MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY, BEHAVIORAL HEALTH CARE SERVICES (BHCS) AND THE OAKLAND POLICE DEPARTMENT (OPD) TO IMPLEMENT A SIX MONTH PILOT PROGRAM CALLED THE MOBILE EVALUATION TEAM (M.E.T.)

WHEREAS, the City of Oakland desires to partner with the Alameda County Health Care Services Agency's BHCS to create a six month pilot Mobile Evaluation Team (MET), in which a Crisis Intervention Trained (C.I.T.) Oakland Police Officer and a licensed clinical social worker from BHCS, will respond as a unit to emergency and non-emergency psychiatric or mental health related calls for service; and

WHEREAS, the M.E.T.'s goal shall be to avoid the use of an involuntary psychiatric hospitalization, when appropriate, by providing alternative treatment resources, which may include consultation, crisis intervention, and referral to brief treatment and/or diversion to other appropriate voluntary crisis services as available; and

WHEREAS, a partnership with BHCS benefits OPD by providing needed crisis, resource and referral services that have the potential to reduce calls for service and may create a safer environment for the officer and clinician responding to calls, through the use of de-escalation and consultation expertise, allowing OPD to focus time and attention on other (non-psychiatric) calls for service; and

WHEREAS, the crisis intervention services provided by the partnership will also enable Alameda County Health Care Services Agency to identify individuals who are already BHCS clients and re-link or re-engage them in treatment services, so as to reduce the number of psychiatric/mental health episodes for these individuals; and

WHEREAS, the estimated cost to the City for this program is six months of salary and benefits for a full time Police Officer (\$74,214.44) (General Fund: 1010, Training Org. 103430) and an unmarked police vehicle (\$12,000), which will be provided as "in-kind" support for the pilot, BHCS shall provide "in kind" a full time licensed clinical social worker (\$200,000) and admin time for billing and processing for the pilot period;

WHEREAS, Section 504(l) provides that, when directed by the City Council, the City Administrator shall have the power and duty to represent the City in its intergovernmental relations and to negotiate contracts for joint government actions, subject to Council approval; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator, or designee, to enter into an MOU with Alameda County Health Care Services Agency, BHSC and the OPD, that outlines the obligations and responsibilities regarding the six month pilot M.E.T. program; and be it

FURTHER RESOLVED: That the City Administrator, or designee, is hereby authorized to complete all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend the proposed MOU with Alameda County Health Care Services Agency, BHCS and OPD and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve said proposed MOU with BHCS, as to form and legality.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF
and PRESIDENT KERNIGHAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California