

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Behavioral Health and Recovery Services

BOARD AGENDA # *B-4

Urgent

Routine

AGENDA DATE June 16, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Agreement with Charles L. Edwards, M.D., for Clinical Mental Health and Clinical Consultation Services for Fiscal Years 2009-2010 and 2010-2011

STAFF RECOMMENDATIONS:

1. Approve the Agreement with Charles L. Edwards, M.D., for Clinical Mental Health and Clinical Consultation Services for Fiscal Years 2009-2010 and 2010-2011.
2. Authorize the Behavioral Health Director, or her designee, to sign the Agreement with Charles L. Edwards, M.D., for Fiscal Years 2009-2010 and 2010-2011.
3. Authorize the Behavioral Health Director, or her designee, to negotiate and sign amendments to this agreement, to add services and payment for services up to \$75,000, budget permitting, throughout the term of this agreement.

FISCAL IMPACT:

The Proposed Budget submitted by Behavioral Health and Recovery Services for Fiscal Year 2009-2010 includes funding in the amount of \$156,403 for the Agreement with Charles L. Edwards, M.D. Funding in the amount of \$161,616 will be included in the Fiscal Year 2010-2011 budget for Behavioral Health and Recovery Services. There is no fiscal impact to the County General Fund.

BOARD ACTION AS FOLLOWS:

No. 2009-402

On motion of Supervisor Chiesa, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

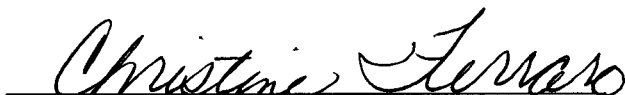
1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Behavioral Health and Recovery Services has an ongoing need in both the Adult System of Care and the Children’s System of Care for clinical mental health services and clinical consultation from specially trained, experienced and competent medical professionals. The Agreement with Charles L. Edwards, M.D., enables Behavioral Health and Recovery Services to meet the anticipated need for Fiscal Years 2009-2010 and 2010-2011 by providing a specially trained, experienced and competent psychiatrist for less than full-time workloads.

Behavioral Health and Recovery Services experiences occasional funding opportunities and unanticipated increases in the utilization of services throughout the year. On many occasions, this additional funding is time sensitive. For this reason, the Department requests authorization for the Behavioral Health Director, or her designee, to negotiate and execute amendments up to \$75,000 to the Agreement in this agenda item when necessary, without further action by the Board of Supervisors, throughout the term of this Agreement.

As required by the Board of Supervisors on January 24, 2006, the table below includes the cumulative value of prior contracts with this vendor for the period beginning July 1, 2002 through June 30, 2010. Any amendments to this Agreement will be identified in subsequent quarterly reports to the Board of Supervisors.

Budget Unit	Contractor	Description of Service Provided or Position Held	Contract Amount for Previous Contractual Period	Proposed Contract Amount and Time Period	Cumulative Contract Total
Mental Health	Edwards, Charles L.	Clinical Mental Health Services	\$1,544,485 (07/01/02-07/11/09)	\$156,403 (07/13/09-6/30/10) \$161,616 (07/01/10-6/30/11)	\$1,862,504

POLICY ISSUE:

Approval of this agenda item supports the Board of Supervisors’ priorities of *A healthy community, Effective Partnerships* and the *Efficient delivery of public services* by ensuring the most cost effective method of providing mental health and alcohol and other drug services through partnerships with community providers.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

**AGREEMENT
FOR
INDEPENDENT CONTRACTOR SERVICES**

This Agreement For Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Charles L. Edwards, M.D. ("Contractor") on July 12, 2009.

Recitals

WHEREAS, the County has a need for services involving clinical mental health services and clinical consultation; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. **Consideration**

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance

benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or

pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Automobile Liability Insurance. If the Contractor utilizes a motor vehicle in performing any of the work or services identified in Exhibit A (Scope of Work), Contractor shall procure and maintain in force throughout the duration of this Agreement an auto liability insurance policy with minimum coverage levels of \$300,000 per occurrence combined single limit for bodily injury liability and property damage liability. The coverage shall include all contractor-owned vehicles and all hired and non-owned vehicles used in performing under this Agreement. A certificate of insurance shall be provided to the County at least ten (10) days prior to the start of services to be performed by the Contractor. The policy shall contain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to County.

6.2 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement

6.3 For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 Each of the parties hereto shall be solely liable for negligent or wrongful acts or omissions of its representatives and employees occurring in the performance of this Agreement, and if either party becomes liable for damages caused by its representatives and employees, it shall pay such damages without contribution by the other party. Contractor's obligation under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to have insurance.

7.2 To the fullest extent permitted by law, the County shall defend, indemnify, hold harmless Contractor and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

7.3 It is understood and agreed that Contractor shall be liable for any acts or omissions which occur outside the course or scope of performance of this Agreement and shall defend, indemnify and hold harmless County, its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs including litigation costs and attorney's fees arising out of or resulting from the active negligence or wrongful act of Contractor.

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing,

photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Business Associates

See **Exhibit B** for compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and Security Standards.

12. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

13. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

14. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

15. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Behavioral Health and Recovery Services
Attn: Contract Manager
800 Scenic Drive
Modesto, CA 95350

To Contractor: Charles L. Edwards, M.D.
P.O. Box 5531
Sonora, CA 95370

16. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

17. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

18. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

19. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

20. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received

independent legal advice from its attorneys or the opportunity to seek such advice.

21. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

22. Governing Law and Venue


This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

**COUNTY OF STANISLAUS
BEHAVIORAL HEALTH AND
RECOVERY SERVICES**

CONTRACTOR NAME

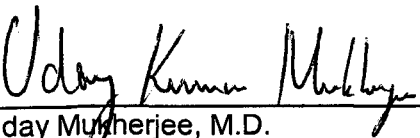
By: 
Denise C. Hunt, RN, MFT
Behavioral Health Director

By: 
Charles L. Edwards, M.D.

"County"

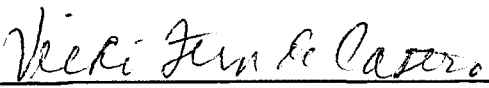
"Contractor"

APPROVED AS TO CONTENT:

By: 
Uday Mukherjee, M.D.
Medical Director

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: 
Vicki Fern de Castro
Deputy County Counsel

BOS Action Item: 2009-402, June 16, 2009.

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EXHIBIT A

A. SCOPE OF WORK

1. Contractor shall be one of several providers of clinical psychiatric services needed throughout Behavioral Health and Recovery Services, Adult System of Care (ASOC) and Children's System of Care (CSOC).
2. Contractor's workload with ASOC clients shall be equivalent to the workload of a County psychiatrist providing at least sixteen (16) hours of service per week, working in a similar setting with ASOC clients.
3. Contractor's workload with CSOC clients shall be equivalent to the workload of a County psychiatrist providing at least five (5) hours of service per week, working in a similar setting with CSOC clients.
4. Contractor shall provide clinical consultation and clinical mental health services to County. Services will be subject to the following performance criteria:
 - a. Workload, including clinical contacts and documentation, shall be managed efficiently and performed in a timely manner;
 - b. Consultation and collaboration with program staff shall be provided from the perspective of an interdisciplinary team approach;
 - c. Participation on Quality Assurance Committees as assigned, if available;
 - d. Practice shall be within BHRS Quality Assurance policies and procedures including policies on medication monitoring, utilization review and treatment plan updates;
 - e. BHRS charting requirements shall be followed according to established time frames. County may withhold compensation for services until charting deficiencies are corrected;
 - f. Appointments with patients shall be kept in a timely manner;
 - g. A review of treatment plans and medical input shall be provided for all patients in programs to which assigned;
 - h. Contacts with patients, their families and staff shall be cooperative, collaborative and professional;
 - i. Accessibility shall be provided to patients and/or staff from a program to which assigned while working in another program;
 - j. Assignment to any County Mental Health Program may be made, at the discretion of the BHRS Medical Director, or his designee, on a temporary or permanent basis, without advance notice; and
 - k. Licensure requirements for the California State Board of Medical Quality Assurance shall be met annually.
2. Contractor shall adhere to the County's Behavioral Health and Recovery Services Code of Ethics, a copy of which was provided to Contractor in July 1997.
3. Contractor assures County that he is not listed on any of the following, which would prohibit County from billing County's services:
 - 3.1 HHS Office of the Inspector General List of Excluded Individuals/Entities (LEIE) report reflecting individuals excluded from federal health care programs.

- 3.2 Excluded Parties/Department List reflecting individuals debarred or excluded from participation in federal procurement and non-procurement programs.
- 3.3 State Medi-Cal Suspended and Ineligible Provider List located at www.medi-cal.ca.gov.

B. OUTCOMES

- 1. Contractor is expected to deliver competent outpatient psychiatric services.

Indicators:

Clients are generally satisfied with psychiatric services in the ASOC and CSOC. ASOC and CSOC staff are generally satisfied with psychiatric services ASOC and CSOC.

C. COMPENSATION

- 1. Contractor shall be compensated for the services provided as follows:

Service Period	Annual Maximum
7/13/09 – 6/30/10	Not to exceed \$156,403
7/1/10 – 6/30/11	Not to exceed \$161,616

- 2. The parties hereto acknowledge the maximum amount to be paid by the County for services provided during the term of this Agreement shall not exceed a total of \$318,019 including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.
- 3. County shall reimburse Contractor monthly at the rate of \$13,468 per month, for each full month this Agreement is in effect. For any month this Agreement is not in effect for the full month, including the partial month of July 2009, the reimbursement shall be pro-rated based on the number of days this Agreement is in effect divided by the total number of days in the month. Contractor shall submit a monthly written invoice to County, in arrears, for the services of the previous month.
- 4. Invoices shall be submitted to: Behavioral Health & Recovery Services, Attn: Accounts Payable, 800 Scenic Drive, Bldg 4, Modesto, CA 95350.

D. PROVIDER STATUS AND REASSIGNMENT OF BENEFITS

Contractor shall provide all documentation and certifications necessary to become an enrolled provider under the Federal Medicare program and all other payor sources of County, including, but not limited to, the CMS 855I Application for Individual Health Care Practitioners and the CMS 855R Application for Individual Health Care Practitioners to Reassign Medicare Benefits. Contractor shall reassign all benefits received for services rendered to County's patients to County. Contractor shall notify County immediately upon any change in Provider Status, including loss of Federal provider status, exclusions by Medicare/Medicaid, or changes to income status.

E. BENEFITS

- 1. County shall provide professional malpractice liability protection for Contractor covering the services to be provided by Contractor pursuant to this Agreement. Contractor,

however, shall be solely liable for his wrongful acts or negligence in operating his private vehicle and shall maintain his own vehicle insurance coverage. Contractor must provide professional malpractice protection for any and all services or care provided outside the course or scope of this Agreement and in Contractor's private practice. This Agreement shall be terminated in the event the County is unable to provide professional liability protection to Contractor through County's professional liability program.

2. County shall provide such office space, supplies; equipment and telephone service as County feels is required for Contractor to provide services under this Agreement

F. FUNDING

If, during the time, which this Agreement is in effect, funds are not allocated to County or Behavioral Health and Recovery Services, sufficient to allow for a continuation of this Agreement, then County may, at its sole discretion, terminate this Agreement, without penalty from or further obligation to Contractor. Contractor shall have no further obligation to County.

G. TERM

These services shall be performed from time to time as requested by County for the period commencing July 13, 2009, and continuing through June 30, 2011.

H. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original.

BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply, to the extent required by law, with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (including but not limited to Title 42, U.S.C. Section 1320d et seq.) and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (CFR), Parts 142, 160, 162 and 164), hereinafter collectively referred to as the "Privacy Rule and Security Standards."

If COUNTY becomes aware of a pattern of activity that violates the HIPAA Privacy Rule, and reasonable steps to cure the violation are unsuccessful, the COUNTY may terminate the Agreement, or if not feasible; report the problem to the Secretary of the US Department of Health and Human Services.

COUNTY and BA desire to facilitate the billing and/or transfer of protected health information (PHI), as defined in 45 CFR, Section 164.504, by electronically transmitting and receiving data in agreed formats and to assure that such transactions comply with relevant laws and regulations.

1. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms used in the Privacy Rule.

1.1 "**Business Associate**" (BA) shall mean CONTRACTOR as identified in this Agreement.

1.2 "**Covered Entity**" shall mean Stanislaus County, Behavioral Health and Recovery Services (BHRS) (COUNTY).

1.3 "**Individual**" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

1.4 "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.5 "**Protected Health Information**" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR, Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.6 "**Security Rule**" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, Subpart C.

1.7 "**Physical Safeguards**" are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

1.8 "**Security or Security measures**" encompass all of the administrative, physical, and technical safeguards in an information system.

1.9 "**Security incident**" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Operations

2.1 **Document Standards.** Each party may transmit to, or receive from, the other party, either electronically or using other media, PHI and/or individually identifiable health information, as defined in 42 U.S.C., Section 1320d, as it pertains to the provision of services under this Agreement. All documents shall be transmitted in accordance with the standards set forth in the BHRS Privacy Policy.

2.2 **System Operations.** Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing necessary to effectively, reliably, and confidentially transmit and receive documents.

3. Electronic Transmissions

Documents shall not be deemed to have been properly received, and no document shall give rise to any obligation, until decrypted and accessible to the receiving party at such party's receipt counter as designated by regulation or policy.

4. Security Standards

4.1 BA shall ensure the implementation of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits.

4.2 BA shall ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards;

4.3 BA is required to report to the covered entity any security incident of which it becomes aware.

4.4 BA shall make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary for purposes of determining the covered entity's compliance with the regulations.

4.5 Covered entity may terminate the contract if the covered entity determines that the BA has violated a material term of the contract.

5. Use and Disclosure of Protected Health Information

5.1 Except as otherwise provided in this Business Associate Exhibit, BA may use or disclose PHI to perform functions, activities or services for or on behalf of the COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the COUNTY or the minimum necessary policies and procedures of the COUNTY.

5.2 Except as otherwise limited in this Business Associate Exhibit, BA may use and disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

5.3 Except as otherwise limited in this Business Associate Exhibit, BA may use PHI to provide data aggregation services related to the health care operation of COUNTY.

5.4 BA shall not use or further disclose PHI other than as permitted or required by this Business Associate Exhibit, or by law.

5.5 BA will promptly report, in writing, to COUNTY any use or disclosure of a PHI not provided for by this Exhibit within seven (7) days of the time BA becomes aware of such use or disclosure, pursuant to 45 CFR, Section 164.528.

5.6 BA shall document such disclosure of PHI and information related to such disclosures as would be required for the COUNTY to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

5.7 BA shall provide to COUNTY or an individual, within seven (7) days, information collected in accordance with Title 45, CFR, Section 164.528, to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

6. Agents and Subcontractors of BA

BA shall ensure that any agent, including subcontractor, to which the BA provides PHI received from, or created or received by BA on behalf of the COUNTY, shall comply with the same restrictions and conditions that apply through this Business Associate Exhibit to the BA with respect to such information.

7. Access to PHI

7.1 BA shall provide access, within seven (7) days of such a request, to the COUNTY or, as directed

by the COUNTY, to PHI in a designated record set to an individual in order to meet the requirements of Title 45, CFR, Section 164.524.

7.2 BA shall, within seven (7) days of such a request, provide individual patient or their legal representative with access to PHI contained in BA's records, pursuant to 45 CFR, Section 164.504 (e)(2)(F).

8. Amendment(s) to PHI

BA shall make any amendment(s) to PHI in a designated record set that the COUNTY directs or at the request of the COUNTY or an individual within seven (7) days of such request in accordance with Title 45, CFR, Section 164.526.

9. Records Available

BA shall make its internal practices, books, and records related to the use, disclosure, and privacy protection of PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY, available to the COUNTY or to the Secretary of HHS for purposes of the Secretary determining compliance with the Privacy Rule, in a time and manner designed by the COUNTY or the Secretary of HHS.

10. Retention, Transfer and Destruction of Information

10.1 Upon termination of this Agreement for any reason, BA shall retain all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY in a manner that complies with the Privacy Rule. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.2 Prior to termination of this Agreement, the BA may be required by the COUNTY to provide copies of PHI to the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.3 When the retention requirements on termination of the Agreement have been met, BA shall destroy all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA. BA, its agents or subcontractors shall retain no copies of the PHI.

10.4 In the event that BA determines that returning or destroying the PHI is not feasible, BA shall provide the COUNTY notification of the conditions that make destruction infeasible. Upon mutual agreement of the parties that the destruction of the PHI is not feasible, BA shall extend the protections of this Business Associate Exhibit to such PHI and limit further use and disclosures of such PHI for so long as BA, or any of its agents or subcontractors, maintains such PHI.

11. Force Majeure

No party shall be liable for any failure to perform its obligations in connection with any transaction or any document where such failure results from any act of nature or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) that prevent such party from transmitting or receiving any documents.

12. Limitation of Damages

Other than specified in elsewhere, neither party shall be liable to the other for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

13. Attorney-Client Privilege

Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by BA or COUNTY by virtue of this Subparagraph.

14. Interpretation

Any ambiguity in this Business Associate Exhibit shall be resolved to permit the COUNTY to comply with the Privacy Rule and Security Standards.