

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

DEPT: Behavioral Health And Recovery Services

BOARD AGENDA # *B-2

Urgent Routine

AGENDA DATE March 31, 2015

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Enter Into Provider Agreements with Catholic Charities of the Diocese of Stockton, Peer Recovery Art Project, Inc., and Stanislaus County Office of Education for the Provision of the Mental Health Services Act (MHSA) Prevention and Early Intervention Services

STAFF RECOMMENDATIONS:

1. Approve an agreement with Catholic Charities of the Diocese of Stockton, a California Non-Profit Corporation for the provision of Mental Health Services Act (MHSA) Prevention and Early Intervention Services addressing Community Capacity Building, as a result of a Request for Proposals (RFP) process for such services, for an amount not to exceed \$300,000 for the period of July 1, 2015 through June 30, 2017.

(Continued on Page 2)

FISCAL IMPACT:

The term of the proposed agreements with Peer Recovery Art Project, Inc. and Stanislaus County Office of Education is April 1, 2015 through June 30, 2017. The term of the proposed agreement with Catholic Charities of the Diocese of Stockton is July 1, 2015 through June 30, 2017.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2015-119

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, De Martini, and Chairman Withrow

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.

STAFF RECOMMENDATIONS: (Continued)

2. Approve an agreement with Peer Recovery Art Project, Inc., a California Non-Profit Corporation for the provision of MHSA Prevention and Early Intervention Services addressing Adult Resiliency and Social Connectedness, as a result of a Request for Proposals process for such services, for an amount not to exceed \$255,980 for the period of April 1, 2015 through June 30, 2017.
3. Approve an agreement with Stanislaus County Office of Education, a California Government Entity for the provision of MHSA Prevention and Early Intervention Services addressing School Behavioral Health Integration, as a result of a Request for Proposals process for such services, for an amount not to exceed \$192,500 for the period of April 1, 2015 through June 30, 2017.
4. Authorize the Behavioral Health Director, or her designee, to sign the agreements, and any amendments thereto, with Catholic Charities of the Diocese of Stockton, Peer Recovery Art Project, Inc. and Stanislaus County Office of Education to provide MHSA Prevention and Early Intervention Services.

FISCAL IMPACT: (Continued)

If staff recommendations are approved by the Board of Supervisors the following project maximums will apply:

| MHSA Prevention and Early Intervention Services Awardee | Contract Focus | Contract Maximum |
|--|---|-------------------------|
| Catholic Charities of the Diocese of Stockton | Community Based Early Intervention | \$300,000 |
| Peer Recovery Art Project, Inc. | Adult Resiliency & Social Connectedness | \$255,980 |
| Stanislaus County Office of Education | School Behavioral Health Integration | \$192,500 |
| Total Proposed Project Amounts | | \$748,480 |

On September 30, 2014, the Board of Supervisors approved a budget adjustment to the Fiscal Year 2014-2015 Behavioral Health and Recovery Services (BHRS) operating budget which included \$250,000 to fund MHSA Prevention and Early Intervention

Approval to Enter Into Provider Agreements with Catholic Charities of the Diocese of Stockton, Peer Recovery Art Project, and Stanislaus County Office of Education for the Provision of Mental Health Services Act (MHSA) Prevention and Early Intervention Services

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Services from October 1, 2014 through June 30, 2015. The Department's fund balance includes \$500,000 in deferred revenue to fund these Prevention and Early Intervention agreements and will be included in the Budget Year 2015-2016 and 2016-2017 Proposed Budget submissions.

Approval of the recommended agreements has no impact to the County General Fund.

DISCUSSION:

Proposition 63, known as the Mental Health Services Act (MHSA), was passed by California voters in November 2004. The Act contained the following five components that have been implemented in stages since January 2006:

- Community Services and Supports – approved January 2006
- Workforce, Education and Training – approved June 2008
- Prevention and Early Intervention – approved July 2009
- Capital Facilities and Technological Needs – approved June 2010
- Innovation – approved September 2010

Prevention and Early Intervention (PEI) is one of the five components of MHSA. California's historic commitment to prevention and early intervention through Proposition 63 moves the mental health system towards a "help-first" instead of a "fail-first" strategy. PEI identifies individuals at the risk of or indicating early signs of mental illness or emotional disturbance and links them to treatment and other resources. PEI creates partnerships with schools, justice systems, primary care, and a wide range of social services and community groups and locates services in convenient places where people go for other routine activities. Twenty percent of Stanislaus County MHSA funding is dedicated to Prevention and Early Intervention (PEI) programs.

On July 18, 2014, community stakeholders approved a priorities funding plan that included a RFP process to be conducted for the Prevention and Early Intervention component. On September 30, 2014, the Board of Supervisors authorized Behavioral Health and Recovery Services (BHRS), in conjunction with the General Services Agency (GSA), to issue a Request for Proposals for MHSA Prevention and Early Intervention services. The RFP was issued on October 6, 2014 and sent electronically to 445 vendors, 36 of which downloaded the RFP. A non-mandatory pre-proposal conference was held on October 16, 2014 and six (6) vendors were in attendance. The RFP closed on November 10, 2014 and GSA received complete responses from the six (6) vendors listed below.

- Golden Valley Health Centers – Merced, CA;
- Sierra Vista Child & Family Services – Modesto, CA ;

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- Stanislaus Multi-Cultural Community Health Coalition West Modesto / King Kennedy Neighborhood Collaborative – Modesto, CA;
- Peer Recovery Art Project – Modesto, CA ;
- Catholic Charities of the Dioceses of Stockton – Stockton, CA ;
- Stanislaus County Office of Education – Modesto, CA.

All of the proposers met the minimum qualifications set forth in Phase I of the Evaluation Phase, which included a financial review. A committee of five (5) evaluators was selected to further evaluate the proposals. The Evaluation Committee was comprised of representatives from the County's Behavioral Health & Recovery Services, an elementary school principal and an independent training coordinator contractor. The proposals needed to address one or more of three PEI areas. These areas were Community Based Early Intervention Services; Adult Resiliency and Social Connectedness, and/or School Behavioral Health Integration. The intent was to ensure that all three areas were addressed.

The Evaluation Committee completed Phase II, which consisted of a review and evaluation of each proposer's qualification proposal along with the proposed budget. The scores of each member of the Evaluation Committee were averaged to determine the actual Phase II score for each finalist. On December 10, 2014, GSA issued a Notice of Non-Award to Golden Valley Health Centers, Stanislaus Multi-Cultural Community Health Coalition West Modesto/King Kennedy Neighborhood Collaborative and Sierra Vista Child and Family Services. No letter of protest was received during the five-day protest period of the RFP process.

| Phase II | Total Points Available | Golden Valley Health Centers | Sierra Vista Child and Family Services | Stanislaus MCCHC /WMKCC | Peer Recovery Art Project | Catholic Charities of the Dioceses of Stockton | Stanislaus County Office of Education |
|----------------------|------------------------|------------------------------|--|-------------------------|---------------------------|--|---------------------------------------|
| Total Average Points | 110 | 77 | 83 | 73 | 71 | 92 | 92 |
| Focus | | Early Intervention | Early Intervention | Early Intervention | Adult Resiliency | Early Intervention | School BH Int. |

The services that were proposed covered a broad spectrum of prevention and early intervention strategies. Additionally, the proposals collectively exceeded the available funding. On the advice of the General Services Agency, PEI staff negotiated with the vendors that met the current needs of the Department and addressed the project focus areas specified in the RFP. Awards were made to the vendors whose proposals best met the criteria set forth in the RFP and provided the best value to the County, with their proposed budget and all other factors, including needs, considered. Although Peer

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Recovery Art Project had a lower score than others, this RFP was the only one that addressed Adult Resiliency and Social Connectedness.

POLICY ISSUE:

Approval of these requests supports the Board of Supervisors' priorities of Effective Partnerships and Efficient Delivery of Public Services by contracting with community providers to deliver the needed services at an appropriate level of service in a cost effective manner.

STAFFING IMPACT:

Existing Behavioral Health and Recovery Services staff is available to support the contracted Prevention and Early Intervention agreements at current service levels. In the future, should the service level demand increase, the Department will analyze available options and return to the Board of Supervisors for consideration of any necessary staffing changes.

CONTACT PERSON:

Madelyn Schlaepfer, Ph.D., Behavioral Health Director (209) 525-6225

**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 Catholic Charities Diocese of Stockton, a California Nonprofit Corporation, ("Contractor"). This Agreement is effective the date of the last signature.

Recitals

WHEREAS, CONTRACTOR'S proposal submitted in response to RFP 14-61-SS was determined to meet the COUNTY's needs for a project to provide community-based early intervention services to Adults and Older Adults, with an emphasis on MHSA unserved and underserved populations;

WHEREAS, the COUNTY has the need for early intervention services for Adults and Older Adults including Spanish speaking who are underserved or unserved, or at-risk, or displaying the onset of serious mental illness or serious emotional disturbance, and their families;

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. Contractor shall comply with all applicable local, state and Federal laws, rules and regulations.

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 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 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 workmen's 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.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its sub-contractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. 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 Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's

rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 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 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

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 and its officers, employees, agents, representatives, subcontractors and

all others acting on behalf of Contractor agree 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. 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 disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. 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.

12. 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.

13. 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 of 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.

14. 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: Catholic Charities of the Diocese of Stockton
Elvira Ramirez, Executive Director
1106 N. El Dorado St.
Stockton, CA 95202

15. 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.

16. 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.

17. Amendment

This Agreement may only 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Survival

Notwithstanding any other provision of this Agreement, the following clauses shall remain in full force and effect and shall survive the expiration or termination of this Agreement: Paragraph 2, "Consideration"; Paragraph 7, "Defense and Indemnification"; Paragraph 9, "Records and Audit"; Paragraph 10, "Confidentiality"; and Paragraph 12, "Assignment".

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

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

**CATHOLIC CHARITIES OF THE
DIOCESE OF STOCKTON**

By: Madelyn Schlaepfer 3-31-15
Madelyn Schlaepfer, Ph.D., CEAP Date
Behavioral Health Director

By: _____
Elvira Ramirez Date
Executive Director

"County"

"Contractor"

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: Marc Hartley
Marc Hartley
Deputy County Counsel

BOS Action Item: 2015-119 Date 3-31-15

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

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

**CATHOLIC CHARITIES OF THE
DIOCESE OF STOCKTON**

By: _____
Madelyn Schlaepfer, Ph.D., CEAP Date
Behavioral Health Director

By: Elvira Ramirez 3-18-15
Elvira Ramirez Date
Executive Director

"County"

"Contractor"

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: _____
Marc Hartley
Deputy County Counsel

BOS Action Item: 2015-119 Date 3-31-15

**MENTAL HEALTH SERVICES ACT
PREVENTION AND EARLY INTERVENTION SERVICES AGREEMENT
COMMUNITY BASED EARLY INTERVENTION SERVICES
SCOPE OF WORK**

PROGRAM OVERVIEW

CONTRACTOR shall provide community-based Early Intervention and Prevention Services for Adults and Older Adults, with an emphasis on MHA unserved and underserved populations.

1.0 TARGET POPULATION

CONTRACTOR shall provide services for Mental Health Service Act priority populations:

- 1.1 Adults and older adults, including Spanish speaking individuals in the underserved/unserved at-risk populations;
- 1.2 Individuals at-risk or exhibiting onset of serious mental illness or displaying mental illness early in its emergence and/or;
- 1.3 Families of individual's from the population of underserved/unserved who are at-risk for serious mental illness or exhibiting onset of serious mental illness or displaying mental illness early in its emergence.

2.0 STAFFING STRUCTURE AND PARTICIPANT TARGETS

To ensure quality of care and effective service, CONTRACTOR shall maintain an Intervention and Prevention Services Team with the staffing equivalent to the following classifications: Program Director, Program Manager- MSW, Outreach/Engagement Workers, and Intern(s). The Intervention and Prevention Services Team has a targeted goal of reaching 10,630 individuals by the end of the term of this contract by accomplishing the performance outcomes listed within Section 4 of Exhibit B, Scope of Work.

3.0 SERVICES

- 3.1 CONTRACTOR shall provide Prevention, Early Intervention, and Outreach services that include, but are not limited to:

EARLY INTERVENTION SERVICES

- 3.1.1. CONTRACTOR shall perform Behavior Health Screenings
- 3.1.2. CONTRACTOR shall provide Brief Counseling Intervention Sessions (which should not exceed 18 months of duration).
- 3.1.3. CONTRACTOR shall provide access and linkage to appropriate services by:
 - 3.1.3.1 Utilizing screening,
 - 3.1.3.2 Referrals,
 - 3.1.3.3 Providing service coordination and linkages to community-based peer and family support.

PREVENTION SERVICES

- 3.1.4 CONTRACTOR shall utilize the following strategies:
 - 3.1.4.1 CONTRACTOR shall provide ENGAGEMENT SERVICES to identify at-risk individuals, subsequent referrals to behavioral health services and community supports, and assistance in getting the individuals engaged in recovery. This shall be provided through:
 - 3.1.4.1.1 Individual Engagement
 - 3.1.4.1.2 Referrals
 - 3.1.4.1.3 Behavioral Health Services Navigation
 - 3.1.4.1.4 Peer Support Development/Training
 - 3.1.4.1.5 Peer Support Group Facilitation
 - 3.1.4.2 CONTRACTOR shall design and implement activities to inform the wider community about behavioral issues, services, and community support. This outreach shall be made through individuals, events, and training.
- 3.2 CONTRACTOR shall incorporate culturally appropriate methods utilizing community-defined, promising practices, and best practice of evidence-based approaches for targeted populations
- 3.3 CONTRACTOR shall provide clear information and education on access and linkage to behavioral health services and community supports.
- 3.4 CONTRACTOR shall deliver services utilizing non-stigmatizing and non-discriminatory approaches and language.
- 3.5 CONTRACTOR shall partner with Behavioral Health & Recovery Services to utilize broader public education campaign materials (pamphlets, handouts, PowerPoint materials, etc.).
- 3.6 As part of outreach and engagement, CONTRACTOR shall conduct a minimum of (12) twelve stigma reduction presentations using the public campaign materials including but not limited to "Each Mind Matters" Campaign (English and Spanish versions) and "Know the Signs" Campaign. Measurement tools to be determined by BHRS.
- 3.7 CONTRACTOR shall provide on a monthly basis approximately 50 Early intervention contacts, 70 Engagement contacts, and 350 Outreach contacts. We would anticipate a reduction in the month of December to the target population.
- 3.8 CONTRACTOR shall attend the Latino Behavioral Collaboration meetings and partner with other community resources.

4.0 PROGRAM PERFORMANCE MEASURES

- 4.1 CONTRACTOR agrees to meet the following performance levels during the term of this agreement:
 - 4.1.1 Fifty (50) Early Intervention contacts (Unduplicated)
 - 4.1.2 Seventy (70) Monthly individual (unduplicated) engagements
 - 4.1.3 On a monthly basis 5% of Engagement contacts will be new

sessions.

- 4.9 CONTRACTOR will provide demographic and wellbeing information using tools provided by or approved by COUNTY, following the administration and submission schedule developed by Behavioral Health and Recovery Services.
- 4.10 CONTRACTOR will continue to work with COUNTY with regards to CONTRACTOR's Results-Based Accountability (RBA) performance outcome measures which will be monitored regularly.

5.0 BILLING AND PAYMENT

- 5.1 COUNTY shall reimburse CONTRACTOR for services delivered under the terms of this Agreement through the following funding sources: Mental Health Services Act- Prevention and Early Intervention.
- 5.2 In consideration of CONTRACTOR's provision of services required under this Agreement, COUNTY shall reimburse CONTRACTOR an amount not to exceed the Contract Maximum of \$300,000 for salaries, benefits and other operating costs.
- 5.3 The monthly invoice shall be equal to the monthly program costs for delivering all the services required by this Agreement. The CONTRACTOR shall provide a monthly expenditure report to accompany the invoice in support of the program costs on the invoice.
- 5.4 COUNTY shall reimburse CONTRACTOR for any undisputed invoices, which COUNTY and CONTRACTOR agree represent the costs of delivering the services required under the terms of this Agreement for the period covered by the invoice, within 30 days of invoice receipt.
- 5.5 Contractor shall submit an invoice electronically to abh@stanbh@stanbh.org or by mail to the following address:

Stanislaus County Behavioral Health & Recovery Services (BHRS)
800 Scenic Drive, Building 4
Modesto, Ca 95350
Attention: Account Payable

- 5.6 CONTRACTOR shall provide COUNTY a Fiscal Year Expenditure Budget to BHRS Contract office on the following schedule:

FY 15-16 (July 1, 2015 through June 30, 2016) due August 3, 2015

FY16-17 (July 1, 2016 through June 30, 2017) due August 1, 2016

6.0. NON-DISCRIMINATION

Delete Section 11 in its entirety and replace with the following:

- 11. Nondiscrimination

11.1 During the performance of this Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Council implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

11.2 Consistent with the requirements of applicable Federal or State Law, the CONTRACTOR shall not engage in any unlawful discriminatory practices in the admission of clients, assignment of accommodations, treatment, evaluation, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age (over 40), sexual preference, or mental or physical disability (including individuals with AIDS or those with a record of or who are regarded as having a substantially limiting impairment), or medical condition (cancer-related), pregnancy related condition, or political affiliation or belief. This policy shall be in writing, in English and Spanish. It shall be posted in all public areas.

7. 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.

8. TERM

These services shall commence on July 1, 2015 and continue through June 30, 2017.

9. COMPLIANCE

Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or non-procurement programs from having a relationship with Contractor.

10. DUPLICATE COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply with the privacy and security requirements of Title II of the Health Insurance Portability and Accountability Act of 1996, (Public Law 104-191), also known as "HIPAA", and Title XIII of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), "the ARRA/HITECH Act" or "the HITECH Act", as these laws may be subsequently amended, and implementing regulations enacted by the Department of Health and Human Services at 45 CFR Parts 160-164, and, regulations enacted with regard to the HITECH Act. The foregoing laws and rules are sometimes collectively referred to hereafter as "HIPAA".

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 defined in the HIPAA and HITECH Statutes and Regulations.

1.1 **"Breach"** shall mean the unauthorized acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

1.1.1 **Exceptions.** The term "Breach" does not include:

1.1.1.1 Any unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and such information is not further acquired, accessed, used, or disclosed by any person; or

1.1.1.2 Any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and

1.1.1.3 Any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

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

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

1.4 **"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).

1.5 **"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.

1.6 **"Protected Health Information" (PHI)** shall have the same meaning as the term "protected health information" in 45 CFR, Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

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

1.8 **“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.

1.9 **“Security or Security measures”** encompass all of the administrative, physical, and technical safeguards in an information system.

1.10 **“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 Behavioral Health and Recovery Services 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.

6. Breach Reporting

6.1 During the term of the agreement, BA shall notify COUNTY, in writing, within five (5) business days of the discovery of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which the BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws and regulations. A breach shall be treated as discovered by the BA as of the first day on which such breach or suspected breach is known to the BA (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the BA) or should reasonably have been known to the BA to have occurred. BA shall take (a) prompt corrective action to cure any Breach, (b) investigate or fully participate in an investigation of the suspected or actual breach of security, (c) assist the COUNTY in compliance with the Notification in The Case Of Breach requirements of Section 13402 of the HITECH Act, and (d) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Notification of Breach shall be made to:

**BHRS Privacy Officer
Behavioral Health and Recovery Services
800 Scenic Drive
Modesto, CA 95350
(209) 525-6225**

6.2 Reports of suspected and actual breaches to COUNTY shall include the following, at a minimum:

- a. Identify each individual whose unsecured protected health information has been, or is reasonably believed by BA to have been, accessed, acquired, used, or disclosed during the breach.
- b. Identify the nature of the Breach.
- c. Identify the date of the Breach.
- d. Identify the date of discovery of the Breach.
- e. Identify which elements of PHI were breached or were part of the Breach.
- f. Identify who was responsible for the Breach and who received the PHI.
- g. Identify what corrective actions the BA took or will take to prevent further incidents of Breach.
- h. Identify what BA did or will do to mitigate any adverse affects of the Breach.
- i. Identify BA contact individual and information for COUNTY to obtain additional information, if required.
- j. Provide copies of any Individual Notice, Media Notice, Notice to Secretary, or Posting on HHS Public Website that BA may have made pursuant to the HITECH Act.
- k. Provide such other information as COUNTY may reasonably request regarding the Breach.

7. 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.

8. Access to PHI

8.1 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.

8.2 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).

9. 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.

10. 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.

11. Retention, Transfer and Destruction of Information

11.1 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.

12. 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.

13. 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.

14. Continuing Privacy and Security Obligation

BA's obligation to protect the privacy and security of the PHI, including all copies and any data derived from this Agreement that may be individually identifiable, shall be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.

15. 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.

16. Interpretation

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

Exhibit C

Department of Health Care Services Mental Health Act Additional Terms and Conditions

To the extent the funds provided by the Department of Health Care Services (DHCS) are used under the Mental Health Act, the following terms of this Exhibit are used and apply:

1. Service, Administrative and Operational Requirements

A. Contractor shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which the contractor offers services to non-Medi-Cal beneficiaries. If the Contractor only serves Medi-Cal beneficiaries, the Contractor shall offer hours of operation that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered.

2. Provider Selection and Certification

A. Contractor shall comply with provisions of 42 C.F.R. §§ 455.104, 455.105, 1002.203, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.

B. Contractor shall comply with provisions of 42 C.F.R. § 438.214, which relates to the implementing of written policies and procedures for selection and retention of providers.

3. Requirements for Day Treatment and Day Rehabilitation

If the services to be delivered under the terms of this agreement include day treatment intensive or day rehabilitation, the CONTRACTOR shall have a written description of the day treatment intensive and/or day rehabilitation program that complies with the following:

A. Contractor shall request payment authorization for day treatment intensive and day rehabilitation services in advance of service delivery under the following conditions:

- 1) Day treatment or day rehabilitation will be provided for more than five days a week;
- 2) At least every three months for continuation of day treatment intensive;
- 3) At least every six months for continuation of day rehabilitation;

- 4) Request authorization for mental health services, as defined in Cal. Code Regs. Tit. 9, §1810.227, provided concurrently with day treatment or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal.Code Regs., Tit.9, §1810.216 and §1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.

B. Contractor shall assure that the advance payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day treatment intensive or day rehabilitation services.

C. Contractor shall meet the requirements of Cal.Code Regs. Tit. 9, § §1840.318, 1840.328, 1840.350 and 1840.352

D. Contractor shall include, at a minimum, the following day treatment intensive and day rehabilitation service components:

- 1) *Community meetings*. These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic milieu, and shall actively involve staff and beneficiaries. Relevant discussions items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:

- 2) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy;

- a) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, and a registered nurse, psychiatric technician, licensed vocational nurse or mental health rehabilitation specialist.

- b) *Therapeutic milieu*. This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model and reinforce constructive interactions involving beneficiaries in the overall program. For example, beneficiaries are provided with opportunities to lead community meetings and to provide feedback to peers. The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively

with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.

c) *Process groups*. These groups, facilitated by staff, shall assist each beneficiary to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.

d) *Skill-building groups*. In these groups, staff shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.

e) *Adjunctive therapies*. These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able to utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan,

E. Day treatment intensive shall additionally include:

1) *Psychotherapy*. Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waived staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.

2) *Mental Health Crisis Protocol.* Contractor shall ensure that there is an established protocol for responding to beneficiaries experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the beneficiary's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the beneficiary is linked to an outside crisis service.

3) *Written Weekly Schedule.* Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.

F. *Staffing requirements.* Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9 §1840.350, for day treatment intensive, and Cal.Code Regs., tit. 9 §1840.352 for day rehabilitation. For day treatment intensive, staff shall include one staff person whose scope of practice includes psychotherapy.

1) Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).

2) At least one staff person shall be present and available to the group in the therapeutic milieu for all scheduled hours of operation.

3) Day treatment intensive and day rehabilitation programs shall maintain documentation that enables the County and DHCS to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as a staff of a group home, a school, or another mental health treatment program). There shall be documentation of the scope of responsibilities for these staff and the specific time in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.

G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, Contractor will

only receive Medi-Cal reimbursement if beneficiary is present for at least 50% of scheduled hours of operation for that day. A separate entry is required and shall be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, Contractor is responsible for re-evaluating the beneficiary's need for the day rehabilitation or day treatment intensive program, and for taking appropriate action.

- H. *Documentation Standards.* Day treatment intensive and day rehabilitation shall meet the documentation standards described in Section 11 of this exhibit. The documentation shall include the date of service, signature of person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, or a registered nurse who is either staff to the day treatment intensive program or the person directing the services.
- I. Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary's community reintegration. Contractor shall ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.
- J. *Written Program Description.* Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe the specific activities of each service and reflects each of the required components of the services as described in this section.
- K. *Additional higher or more specific standards.* COUNTY shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the County's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically necessary day treatment intensive and day rehabilitation.
- L. *Continuous Hours of Operation.* Contractor shall apply the following when claiming for day treatment intensive and day rehabilitation services:

- 1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.
- 2) A full day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.
- 3) Although the beneficiary must receive face to face services on a full day or half day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.
- 4) The requirement for continuous hours of operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. Contractor shall not count these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

4. Disclosures.

Contractor shall submit the disclosures below to the County BHRS Contracts Manager regarding the network providers' (disclosing entities') ownership and control. Contractor must submit updated disclosures to the BHRS Contracts Manager upon submitting the provider application, before entering into or renewing a contract with the County, and within 35 days after any change in the subcontract/network provider's ownership or upon request by the County.

A. Disclosures to be provided:

- 1) The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
- 2). Date of birth and Social Security Number (in the case of an individual);
- 3). Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);
- 4). Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to

another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;

5) The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and

6) The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

B. Disclosures Related to Business Transactions. Contractor must submit disclosures and updated disclosures to the County including information regarding certain business transactions within 35 days, upon request.

1) The following information must be disclosed:

a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,

b) Any significant business transactions between the Contractor and any subcontractor, during the 5 year period ending on the date of the request.

C. Disclosures Related to Persons Convicted of Crimes. Contractor shall submit the following disclosures to the County regarding the Contractor's management:

1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a) (1), (2).)

2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. §455.106(a) (1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. §455.101.

3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the County's request.

5. Beneficiary Liability for Payment

A. Pursuant to Cal. Code Regs., tit.9, § 1810.365, the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with 42 C.F.R. § 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

6. Audits and Recovery of Overpayments

A. Contractor shall be subject to audits and/or reviews, including client record reviews, by the Department Health Care Services.

7. Federal Equal Opportunity Requirements

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without

- discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- B. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
 - C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - D. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - E. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - F. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the provisions of Paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

8. Travel and Per Diem Reimbursement

A. CONTRACTOR reimbursement for travel and per diem expenses under this agreement shall be no higher than the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary.

9. Procurement Rules

A. Equipment/Property definitions

Wherever the term equipment and/or property is used, the following definitions shall apply:

- 1) Major equipment/property: A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

- 2) Minor equipment/property: A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this agreement.

B. Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

- 1) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
- 2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
- 3) Procurements shall be conducted in a manner that provides for all of the following:
 - a. Avoid purchasing unnecessary or duplicate items;
 - b. Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured;
 - c. Take positive steps to utilize small and veteran owned businesses.
- 4) Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager and the BHRS Contracts Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- 5) In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or submission of paid vendor receipts for any purchase, regardless of dollar amount, DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determined to be unnecessary in carrying out performance under this agreement.
- 6) For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor for inspection or audit.

10. **Equipment/Property Ownership/Inventory/Disposition**
- A. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
 - B. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property
 - C. .In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor shall immediately file a theft report with the appropriate police agency and Contractor shall promptly submit one copy of the theft report to the BHRS Contracts Manager.
11. **Motor Vehicles**
The purchase of a vehicle with DHCS funds under this agreement requires that a written request be submitted to the BHRS Contracts Manager and prior written BHRS department approval and authorization must be given prior to the purchase of vehicle.
12. **Income Restrictions**
Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to BHRS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by BHRS under this Agreement.
13. **Audit and Record Retention**
(Applicable to agreements in excess of \$10,000)
- A. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
 - B. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United

States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- C. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- D. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

14. Site Inspection

- A. The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premise of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

15. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds)

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of

congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

- B. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

16. Intellectual Property Rights

- A. Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- B. Contractor agrees to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor, or DHCS and which result directly or indirectly from this Agreement or any subcontract.

17. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/sub awards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences;

portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- C. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

18. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

- A. Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

19. Use of Small, Minority Owned and Women's Businesses

- A. Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development

Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

20. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements)

- A. By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

21. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations)

- A. Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.
- B. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

As used herein, fringe benefits do not include

- 1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
- 2) Director's and executive committee member's fees
- 3) Incentive awards and/or bonus incentive pay.
- 4) Allowances for off-site pay
- 5) Location allowances
- 6) Hardship pay
- 7) Cost-of-living differentials

- B. Specific allowable fringe benefits include:

- 1) Fringe benefits in the form of employer contribution for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI) employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- 2) To be an allowable fringe benefit, the cost must meet the following criteria:
 - a) Be necessary and reasonable for the performance of the Agreement;
 - b) Be determined in accordance with generally accepted

- accounting principles;
- c) Be consistent with policies that apply uniformly to all activities of the Contractor.
- 3) Contractor agrees that all fringe benefits shall be at actual cost.
- 4) Earned/Accrued Compensation
- a) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Example No. 1.
 - b) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Example No. 2.
 - c) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Example No. 3.

Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks)

Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to

DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

23. Lobbying Prohibition

(Applicable to all sub awards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more)

A. Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan or cooperative agreement.

24. Patient Rights

Pursuant to 42 C.F.R. § 438.100, Contractor shall take beneficiaries rights into account when providing services, including the right to:

- A. Receive information in accordance with 42 C.F.R. § 438.10.
- B. Be treated with respect and with due consideration for his or her dignity and privacy.
- C. Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.
- D. Participate in decisions regarding his or her health care, including the right to refuse treatment.
- E. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- F. Request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.
- G. To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.
- H. To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

**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") through its department of Behavioral Health and Recovery Services and , Stanislaus County Office of Education(SCOE), ("Contractor"). This Agreement is effective the date of the last signature.

Recitals

WHEREAS, CONTRACTOR'S proposal submitted in response to RFP 14-61-SS was determined to meet the COUNTY's needs for a project to provide School Behavioral Health-Capacity Building;

WHEREAS, the COUNTY has the need to provide mental health training and education for education system staff and partners of K-12 through college education level locations to increase the capacity to serve Mental Health Services Act priority populations of Children, Youth, Underserved/Unserved, Latino, African American, South East Asian , and LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Questioning) students;

WHEREAS, COUNTY has need for leading/facilitating the monthly Student Mental Health Initiative;

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. Contractor shall comply with all applicable local, state and Federal laws, rules and regulations.

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 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 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 workmen's 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.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its sub-contractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. 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 Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the

required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-.VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 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 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

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 and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor agree 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. 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 disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. 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.

12. 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.

13. 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.

14. 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: Stanislaus County Office of Education
Attn: Vicki Bauman
1100 H Street
Modesto, CA 95354

15. 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.

16. 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.

17. Amendment

This Agreement may only 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Survival

Notwithstanding any other provision of this Agreement, the following clauses shall remain in full force and effect and shall survive the expiration or termination of this Agreement: Paragraph 2, "Consideration"; Paragraph 7, "Defense and Indemnification"; Paragraph 9, "Records and Audit"; Paragraph 10, "Confidentiality"; and Paragraph 12, "Assignment".

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

COUNTY OF STANISLAUS
BEHAVIORAL HEALTH AND
RECOVERY SERVICES

STANISLAUS COUNTY OFFICE OF
EDUCATION

By: _____
Madelyn Schlaepfer, Ph.D., CEAP Date
Behavioral Health Director

By: *Don Gatti* 3-16-15
Don Gatti, Date
Deputy Superintendent

"COUNTY"

"CONTRACTOR"

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: *Scott Kuykendall* 3/14/15
Scott Kuykendall Date
Assistant Superintendent of Education
Options 3/13/15

By: _____
Marc Hartley
Deputy County Counsel

By: *Vicki Bauman*
Vicki Bauman Date
Director II, Preventions

BOS Action Item: 2015-119 Date 3-31-15

21. 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.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

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

**STANISLAUS COUNTY OFFICE OF
EDUCATION**

By: Madelyn Schlaepfer 3-31-15
Madelyn Schlaepfer, Ph.D., CEAP Date
Behavioral Health Director

By: _____ Date
Don Gatti,
Deputy Superintendent

"COUNTY"

"CONTRACTOR"

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: _____ Date
Scott Kuykendall
Assistant Superintendent of Education
Options

By: Marc Hartley
Marc Hartley
Deputy County Counsel

By: _____ Date
Vicki Bauman
Director II, Preventions

BOS Action Item: _____ Date _____

**MENTAL HEALTH SERVICES ACT
PREVENTION SERVICES
SCHOOL BEHAVIORAL HEALTH – CAPACITY BUILDING
SCOPE OF WORK**

PROGRAM OVERVIEW

CONTRACTOR shall provide mental health training for education system staff and partners at k-12 through college education level locations to increase the capacity to serve the needs of the Mental Health Services Act priority population of Children, Youth, Underserved/Unservd, Latino, African American, and LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Questioning) students.

1.0 TARGET POPULATION

- 1.1 CONTRACTOR shall provide services for education system of staff and partners so that impact can be made on the following Mental Health Services Act (MHSA) priority populations:
 - 1.1.1 Unserved and Underserved populations, such as Latino, African American, South East Asian, and LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Questioning) students.
 - 1.1.2 The demographic target profile shall include Adults, Transitional Age Youth, Youth and Children.

2.0 STAFFING

CONTRACTOR shall maintain Prevention Services Team with the equivalent of the following classifications: Regional Health & Safety Coordinator, Regional Health & Safety Training Professional, Event Planning Specialist, and Grant Specialist. The Prevention Services Team has a targeted goal of reaching 1350 individuals by the end of the term of this contract through meeting the training performance outcomes listed within Section 4 of Exhibit B, Scope of Work.

3.0 SERVICES

- 3.1 CONTRACTOR shall provide the following services:
 - 3.1.1 Behavioral health trainings to include:
 - 3.1.1.1 Applied Suicide Intervention Skills Training (ASIST)
 - 3.1.1.2 Mental Health First Aid (MHFA)
 - 3.1.1.3 Question, Persuade, Refer (QPR) Suicide Prevention
 - 3.1.1.4 General Mental Health Services Outreach Training
 - 3.1.2 College Mental Wellness Workshop and Seminars Event
 - 3.1.3 Coordinate the Student Behavioral Health Collaboration
- 3.2 CONTRACTOR shall incorporate culturally appropriate methods utilizing community defined, promising practices, and best practices of evidence-based approaches for targeted populations.
- 3.3 CONTRACTOR shall provide clear information and education on access and linkage to behavioral health services and community supports.

- 3.4 CONTRACTOR shall deliver services utilizing non-stigmatizing and non-discriminatory approaches and language.
- 3.5 CONTRACTOR's project staff will have representative attend quarterly BHRS contractors meetings to receive program updates and build collaboration between Prevention and Early Intervention partners.
- 3.6 CONTRACTOR shall partner with Behavioral Health & Recovery Services to utilize broader public education campaign materials (pamphlets, handouts, PowerPoint materials, etc.) and the agreed upon evaluation tools.
- 3.7 CONTRACTOR shall work collaboratively with BHRS in utilizing agreed upon evaluation forms and measurement tools as well as the submission of data collected including but not limited to demographic information.
- 3.8 CONTRACTOR will also coordinate quarterly meetings of the Student Mental Wellness Partnership, which consists of the following original CalMHSa Student Mental Health Initiative (SMHI) partners: Stanislaus County Office of Education, CSU Stanislaus, Modesto Junior College and BHRS. Additional partners will be invited as appropriate, including guest speakers such as Kings View Suicide Prevention Hotline and NAMI. District and school personnel interested in collaborating on the initiative will also be invited to participate in meetings with guest speakers and special presentations or trainings. Meetings will be held quarterly at SCOE or other facilities convenient to the participating partners. The goals of this group will be to collaborate on training programs, coordinate the college events and plan for program sustainability.
- 3.9 Contractor shall provide all services using cultural and community engagement and outreach best practice approaches.

4.0 PROGRAMS PERFORMANCE MEASURES

- 4.1 CONTRACTOR shall have completed a minimum of Five (5) sessions of ASIST Training.
- 4.2 CONTRACTOR shall have completed a minimum of Thirteen (13) sessions of Mental Health First Aid.
- 4.3 CONTRACTOR shall have completed a minimum of Forty-five (45) sessions of Question, Persuade, Refer.
- 4.4 CONTRACTOR shall have completed a minimum of Forty (40) Outreach Training Presentations.
- 4.5 CONTRACTOR shall have completed a minimum of Four (4) Stigma and Discrimination Reduction (SDR) trainings/workshops at CSU Stanislaus.
- 4.6 CONTRACTOR shall have coordinated quarterly Student Mental Wellness Partnership meetings.

- 4.7 CONTRACTOR agrees to meet the following performance levels during the term of this agreement:
- 4.7.1 Improved changes in attitudes, knowledge, and /or behavior related to seeking mental health services,
- 4.7.2 Improved changes in attitudes, knowledge, and/or behavior regarding suicide related to mental illness.
- 4.8 CONTRACTOR shall participate and collaborate in RBA Learning & Program performance and refine performance measures and tools used as needed.
- 4.9 CONTRACTOR shall collaborate with BHRS with regards to data collection and sharing of information.
- 4.10 CONTRACTOR's project staff will attend quarterly BHRS contractors meetings to receive program updates and build collaboration between PEI partners.
- 4.11 CONTRACTOR shall collect and report quarterly Results-Based Accountability (RBA) data according to the following due date schedule:
- | <u>Period</u> | <u>Due date</u> |
|---------------------------------|---------------------------|
| • Quarter 4 (April-June 2015): | Friday, July 31, 2015 |
| <u>Fiscal year 15-16</u> | |
| • Quarter 1 (July-September): | Friday, October 30, 2015 |
| • Quarter 2 (October-December): | Friday, January 29, 2016 |
| • Quarter 3 (January-March): | Friday, April 29, 2016 |
| • Quarter 4 (April-June) | Friday, July 29, 2016 |
| <u>Fiscal year 16-17</u> | |
| • Quarter 1 (July-September): | Friday, October 28, 2016 |
| • Quarter 2 (October-December): | Tuesday, January 31, 2017 |
| • Quarter 3 (January-March): | Friday, April 28, 2017 |
| • Quarter 4 (April-June) | Friday, July 31, 2017 |
- All RBA quarterly reports will be submitted to PEIsubmit@stanbhrs.org**
- 4.12 CONTRACTOR shall produce bi-annual narrative reports which will include performance measures. The mid-year reports are due February 15th of each year and the year-end reports are due September 1st of each year. The first annual report will only have three months of work to report on, as it is for the last three months in the Fiscal Year 14-15. Narrative reports shall be submitted electronically to COUNTY at contracts@stanbhrs.org
- 4.13 CONTRACTOR shall have a representative attend RBA trainings and/or Learning Groups, monitoring meetings and/or technical assistance (TA) sessions.
- 4.14 CONTRACTOR will provide demographic and wellbeing information using tools provided by or approved by COUNTY, following the administration and submission schedule developed by Behavioral Health and Recovery Services.

5.0 BILLING AND PAYMENT

- 5.1 COUNTY shall reimburse CONTRACTOR for services delivered under the terms of this Agreement through the following funding sources: Mental Health Services Act- Prevention and Early Intervention.
- 5.2 In consideration of CONTRACTOR's provision of services required under this Agreement, COUNTY shall reimburse CONTRACTOR an amount not to exceed the Contract Maximum of \$192,500 for salaries, benefits and other operating costs. \$12,500 of the \$192,500 Contract Maximum has been allocated as the maximum available funds for the initial contract time period of April 1, 2015 through June 30, 2015. Any monies from this three month time period not expended may be consumed in the remaining two fiscal year contract periods.
- 5.3 The monthly invoice shall be equal to the monthly program costs for delivering all the services required by this Agreement. The CONTRACTOR shall provide a monthly expenditure report to accompany the invoice in support of the program costs on the invoice.
- 5.4 COUNTY shall reimburse CONTRACTOR for any undisputed invoices, which COUNTY and CONTRACTOR agree represent the costs of delivering the services required under the terms of this Agreement for the period covered by the invoice, within 30 days of invoice receipt.
- 5.5 Contractor shall submit an invoice electronically to abhhs@stanbhhs.org or by mail to the following address:
- Stanislaus County Behavioral Health & Recovery Services (BHRS)
800 Scenic Drive, Building 4
Modesto, Ca 95350
Attention: Account Payable
- 5.6 CONTRACTOR shall provide COUNTY a Fiscal Year Expenditure Budget to BHRS Contract office on the following schedule:
- FY 15-16 (July 1, 2015 through June 30, 2016) due August 3, 2015
- FY16-17 (July 1, 2016 through June 30, 2017) due August 1, 2016

6.0 NON-DISCRIMINATION

In reference to Section 11, Nondiscrimination, under Terms & Conditions of this Agreement, is deleted in its entirety and replace with the following:

11. Nondiscrimination

11.1 During the performance of this Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their

employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Council implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

11.2 Consistent with the requirements of applicable Federal or State Law, the CONTRACTOR shall not engage in any unlawful discriminatory practices in the admission of clients, assignment of accommodations, treatment, evaluation, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age (over 40), sexual preference, or mental or physical disability (including individuals with AIDS or those with a record of or who are regarded as having a substantially limiting impairment), or medical condition (cancer-related), pregnancy related condition, or political affiliation or belief. This policy shall be in writing, in English and Spanish. It shall be posted in all public areas.

7.0 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.

8.0 TERM

These services shall commence on April 1, 2015 and continue through June 30, 2017.

9.0 COMPLIANCE

Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or non-procurement programs from having a relationship with Contractor.

10. DUPLICATE COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply with the privacy and security requirements of Title II of the Health Insurance Portability and Accountability Act of 1996, (Public Law 104-191), also known as "HIPAA", and Title XIII of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), "the ARRA/HITECH Act" or "the HITECH Act", as these laws may be subsequently amended, and implementing regulations enacted by the Department of Health and Human Services at 45 CFR Parts 160-164, and, regulations enacted with regard to the HITECH Act. The foregoing laws and rules are sometimes collectively referred to hereafter as "HIPAA".

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 defined in the HIPAA and HITECH Statutes and Regulations.

1.1 **"Breach"** shall mean the unauthorized acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

1.1.1 **Exceptions.** The term "Breach" does not include:

1.1.1.1 Any unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and such information is not further acquired, accessed, used, or disclosed by any person; or

1.1.1.2 Any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and

1.1.1.3 Any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

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

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

1.4 **"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).

1.5 **"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.

1.6 **"Protected Health Information"** (PHI) shall have the same meaning as the term "protected health information" in 45 CFR, Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

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

1.8 “**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.

1.9 “**Security or Security measures**” encompass all of the administrative, physical, and technical safeguards in an information system.

1.10 “**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 Behavioral Health and Recovery Services 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.

6. Breach Reporting

6.1 During the term of the agreement, BA shall notify COUNTY, in writing, within five (5) business days of the discovery of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which the BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws and regulations. A breach shall be treated as discovered by the BA as of the first day on which such breach or suspected breach is known to the BA (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the BA) or should reasonably have been known to the BA to have occurred. BA shall take (a) prompt corrective action to cure any Breach, (b) investigate or fully participate in an investigation of the suspected or actual breach of security, (c) assist the COUNTY in compliance with the Notification in The Case Of Breach requirements of Section 13402 of the HITECH Act, and (d) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Notification of Breach shall be made to:

**BHRS Privacy Officer
Behavioral Health and Recovery Services
800 Scenic Drive
Modesto, CA 95350
(209) 525-6225**

6.2 Reports of suspected and actual breaches to COUNTY shall include the following, at a minimum:

- a. Identify each individual whose unsecured protected health information has been, or is reasonably believed by BA to have been, accessed, acquired, used, or disclosed during the breach.
- b. Identify the nature of the Breach.
- c. Identify the date of the Breach.
- d. Identify the date of discovery of the Breach.
- e. Identify which elements of PHI were breached or were part of the Breach.
- f. Identify who was responsible for the Breach and who received the PHI.
- g. Identify what corrective actions the BA took or will take to prevent further incidents of Breach.
- h. Identify what BA did or will do to mitigate any adverse affects of the Breach.
- i. Identify BA contact individual and information for COUNTY to obtain additional information, if required.
- j. Provide copies of any Individual Notice, Media Notice, Notice to Secretary, or Posting on HHS Public Website that BA may have made pursuant to the HITECH Act.
- k. Provide such other information as COUNTY may reasonably request regarding the Breach.

7. 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.

8. Access to PHI

8.1 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.

8.2 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).

9. 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.

10. 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.

11. Retention, Transfer and Destruction of Information

11.1 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.

12. 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.

13. 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.

14. Continuing Privacy and Security Obligation

BA's obligation to protect the privacy and security of the PHI, including all copies and any data derived from this Agreement that may be individually identifiable, shall be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.

15. 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.

16. Interpretation

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

Exhibit C

Department of Health Care Services Mental Health Act Additional Terms and Conditions

To the extent the funds provided by the Department of Health Care Services (DHCS) are used under the Mental Health Act, the following terms of this Exhibit are used and apply:

1. Service, Administrative and Operational Requirements

A. Contractor shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which the contractor offers services to non-Medi-Cal beneficiaries. If the Contractor only serves Medi-Cal beneficiaries, the Contractor shall offer hours of operation that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered.

2. Provider Selection and Certification

A. Contractor shall comply with provisions of 42 C.F.R. §§ 455.104, 455.105, 1002.203, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.

B. Contractor shall comply with provisions of 42 C.F.R. § 438.214, which relates to the implementing of written policies and procedures for selection and retention of providers.

3. Requirements for Day Treatment and Day Rehabilitation

If the services to be delivered under the terms of this agreement include day treatment intensive or day rehabilitation, the CONTRACTOR shall have a written description of the day treatment intensive and/or day rehabilitation program that complies with the following:

A. Contractor shall request payment authorization for day treatment intensive and day rehabilitation services in advance of service delivery under the following conditions:

- 1) Day treatment or day rehabilitation will be provided for more than five days a week;
- 2) At least every three months for continuation of day treatment intensive;
- 3) At least every six months for continuation of day rehabilitation;

4) Request authorization for mental health services, as defined in Cal. Code Regs. Tit. 9, §1810.227, provided concurrently with day treatment or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal.Code Regs., Tit.9, §1810.216 and §1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.

B. Contractor shall assure that the advance payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day treatment intensive or day rehabilitation services.

C. Contractor shall meet the requirements of Cal.Code Regs. Tit. 9, § 1840.318, 1840.328, 1840.350 and 1840.352

D. Contractor shall include, at a minimum, the following day treatment intensive and day rehabilitation service components:

1) *Community meetings*. These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic milieu, and shall actively involve staff and beneficiaries. Relevant discussions items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:

2) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy;

a) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, and a registered nurse, psychiatric technician, licensed vocational nurse or mental health rehabilitation specialist.

b) *Therapeutic milieu*. This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model and reinforce constructive interactions involving beneficiaries in the overall program. For example, beneficiaries are provided with opportunities to lead community meetings and to provide feedback to peers. The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively

with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.

c) *Process groups*. These groups, facilitated by staff, shall assist each beneficiary to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.

d) *Skill-building groups*. In these groups, staff shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.

e) *Adjunctive therapies*. These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able to utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan,

E. Day treatment intensive shall additionally include:

1) *Psychotherapy*. Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waived staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.

2) *Mental Health Crisis Protocol.* Contractor shall ensure that there is an established protocol for responding to beneficiaries experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the beneficiary's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the beneficiary is linked to an outside crisis service.

3) *Written Weekly Schedule.* Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.

F. *Staffing requirements.* Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9 §1840.350, for day treatment intensive, and Cal. Code Regs., tit. 9 §1840.352 for day rehabilitation. For day treatment intensive, staff shall include one staff person whose scope of practice includes psychotherapy.

1) Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).

2) At least one staff person shall be present and available to the group in the therapeutic milieu for all scheduled hours of operation.

3) Day treatment intensive and day rehabilitation programs shall maintain documentation that enables the County and DHCS to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as a staff of a group home, a school, or another mental health treatment program). There shall be documentation of the scope of responsibilities for these staff and the specific time in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.

G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, Contractor will

only receive Medi-Cal reimbursement if beneficiary is present for at least 50% of scheduled hours of operation for that day. A separate entry is required and shall be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, Contractor is responsible for re-evaluating the beneficiary's need for the day rehabilitation or day treatment intensive program, and for taking appropriate action.

- H. *Documentation Standards.* Day treatment intensive and day rehabilitation shall meet the documentation standards described in Section 11 of this exhibit. The documentation shall include the date of service, signature of person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, or a registered nurse who is either staff to the day treatment intensive program or the person directing the services.
- I. Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary's community reintegration. Contractor shall ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.
- J. *Written Program Description.* Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe the specific activities of each service and reflects each of the required components of the services as described in this section.
- K. *Additional higher or more specific standards.* COUNTY shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the County's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically necessary day treatment intensive and day rehabilitation.
- L. *Continuous Hours of Operation.* Contractor shall apply the following when claiming for day treatment intensive and day rehabilitation services:

- 1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.
- 2) A full day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.
- 3) Although the beneficiary must receive face to face services on a full day or half day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.
- 4) The requirement for continuous hours of operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. Contractor shall not count these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

4. Disclosures.

Contractor shall submit the disclosures below to the County BHRS Contracts Manager regarding the network providers' (disclosing entities') ownership and control. Contractor must submit updated disclosures to the BHRS Contracts Manager upon submitting the provider application, before entering into or renewing a contract with the County, and within 35 days after any change in the subcontract/network provider's ownership or upon request by the County.

A. Disclosures to be provided:

- 1) The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
- 2). Date of birth and Social Security Number (in the case of an individual);
- 3). Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);
- 4). Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to

another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;

5) The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and

6) The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

B. Disclosures Related to Business Transactions. Contractor must submit disclosures and updated disclosures to the County including information regarding certain business transactions within 35 days, upon request.

1) The following information must be disclosed:

a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,

b) Any significant business transactions between the Contractor and any subcontractor, during the 5 year period ending on the date of the request.

C. Disclosures Related to Persons Convicted of Crimes. Contractor shall submit the following disclosures to the County regarding the Contractor's management:

1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a) (1), (2).)

2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. §455.106(a) (1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. §455.101.

3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the County's request.

5. Beneficiary Liability for Payment

A. Pursuant to Cal. Code Regs., tit.9, § 1810.365, the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with 42 C.F.R. § 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

6. Audits and Recovery of Overpayments

A. Contractor shall be subject to audits and/or reviews, including client record reviews, by the Department Health Care Services.

7. Federal Equal Opportunity Requirements

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without

- discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- B. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
 - C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - D. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - E. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - F. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the provisions of Paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

8. Travel and Per Diem Reimbursement

A. CONTRACTOR reimbursement for travel and per diem expenses under this agreement shall be no higher than the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary.

9. Procurement Rules

A. Equipment/Property definitions

Wherever the term equipment and/or property is used, the following definitions shall apply:

- 1) Major equipment/property: A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

- 2) Minor equipment/property: A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this agreement.

B. Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

- 1) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
- 2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
- 3) Procurements shall be conducted in a manner that provides for all of the following:
 - a. Avoid purchasing unnecessary or duplicate items;
 - b. Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured;
 - c. Take positive steps to utilize small and veteran owned businesses.
- 4) Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager and the BHRS Contracts Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- 5) In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or submission of paid vendor receipts for any purchase, regardless of dollar amount, DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determined to be unnecessary in carrying out performance under this agreement.
- 6) For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor for inspection or audit.

10. **Equipment/Property Ownership/Inventory/Disposition**
- A. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
 - B. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property
 - C. In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor shall immediately file a theft report with the appropriate police agency and Contractor shall promptly submit one copy of the theft report to the BHRS Contracts Manager.
11. **Motor Vehicles**
- The purchase of a vehicle with DHCS funds under this agreement requires that a written request be submitted to the BHRS Contracts Manager and prior written BHRS department approval and authorization must be given prior to the purchase of vehicle.
12. **Income Restrictions**
- Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to BHRS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by BHRS under this Agreement.
13. **Audit and Record Retention**
(Applicable to agreements in excess of \$10,000)
- A. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
 - B. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United

States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- C. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- D. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

14. Site Inspection

- A. The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premise of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

15. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds)

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of

congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

- B. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

16. Intellectual Property Rights

- A. Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- B. Contractor agrees to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor, or DHCS and which result directly or indirectly from this Agreement or any subcontract.

17. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/sub awards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences;

- portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
 - C. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

18. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

- A. Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

19. Use of Small, Minority Owned and Women's Businesses

- A. Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- 1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- 2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- 3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- 4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development

Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

20. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements)

- A. By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

21. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations)

- A. Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.
- B. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

As used herein, fringe benefits do not include

- 1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
- 2) Director's and executive committee member's fees
- 3) Incentive awards and/or bonus incentive pay.
- 4) Allowances for off-site pay
- 5) Location allowances
- 6) Hardship pay
- 7) Cost-of-living differentials

- B. Specific allowable fringe benefits include:

- 1) Fringe benefits in the form of employer contribution for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI) employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- 2) To be an allowable fringe benefit, the cost must meet the following criteria:
 - a) Be necessary and reasonable for the performance of the Agreement;
 - b) Be determined in accordance with generally accepted

- accounting principles;
- c) Be consistent with policies that apply uniformly to all activities of the Contractor.
- 3) Contractor agrees that all fringe benefits shall be at actual cost.
- 4) Earned/Accrued Compensation
- a) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Example No. 1.
 - b) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Example No. 2.
 - c) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Example No. 3.

Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks)

Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to

DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

23. Lobbying Prohibition

(Applicable to all sub awards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more)

- A. Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan or cooperative agreement.

24. Patient Rights

Pursuant to 42 C.F.R. § 438.100, Contractor shall take beneficiaries rights into account when providing services, including the right to:

- A. Receive information in accordance with 42 C.F.R. § 438.10.
- B. Be treated with respect and with due consideration for his or her dignity and privacy.
- C. Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.
- D. Participate in decisions regarding his or her health care, including the right to refuse treatment.
- E. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- F. Request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.
- G. To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.
- H. To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

**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 Peer Recovery Art Project, Incorporated, a California Non-Profit Association, ("Contractor"). This Agreement is effective the date of the last signature.

Recitals

WHEREAS, CONTRACTOR'S proposal submitted in response to RFP 14-61-SS was determined to meet the COUNTY's needs for a project to provide adult mental health peer support services to targeted population;

WHEREAS, the COUNTY has the need for community-based Outreach & Engagement, Stigma Reduction, and Suicide Prevention Services for Adults and Older Adults in Stanislaus County;

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. Contractor shall comply with all applicable local, state and Federal laws, rules and regulations.

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 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 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 workmen's 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.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its sub-contractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. 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 Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-:VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 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 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

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 and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor agree 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. 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 disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. 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.

12. 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.

13. 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.

14. 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: Peer Recovery Art Project, Inc.
Attn: John Black CEO
P.O. Box 5354
Modesto, CA 95352

15. 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.

16. 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.

17. Amendment

This Agreement may only 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Survival

Notwithstanding any other provision of this Agreement, the following clauses shall remain in full force and effect and shall survive the expiration or termination of this Agreement: Paragraph 2, "Consideration"; Paragraph 7, "Defense and Indemnification"; Paragraph 9, "Records and Audit"; Paragraph 10, "Confidentiality"; and Paragraph 12, "Assignment".

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

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

PEER RECOVERY ART PROJECT, Inc.

By: Madelyn Schaefer 3-31-15 By: _____
Madelyn Schaefer, Ph.D., CEAP Date John Black, CEO Date
Behavioral Health Director

"County"

"Contractor"

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: Marc Hartley
Marc Hartley
Deputy County Counsel

BOS Action Item: 2015-119 Date 3-31-15

22. Survival

Notwithstanding any other provision of this Agreement, the following clauses shall remain in full force and effect and shall survive the expiration or termination of this Agreement: Paragraph 2, "Consideration"; Paragraph 7, "Defense and Indemnification"; Paragraph 9, "Records and Audit"; Paragraph 10, "Confidentiality"; and Paragraph 12, "Assignment".

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

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

PEER RECOVERY ART PROJECT, Inc.

By: _____
Madelyn Schlaepfer, Ph.D., CEAP Date
Behavioral Health Director

"County"

By: John Black 3-18-2015
John Black, CEO Date

"Contractor"

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: _____
Marc Hartley
Deputy County Counsel

BOS Action Item: 2015-119 Date 3-31-15

**MENTAL HEALTH SERVICES ACT
PREVENTION AND EARLY INTERVENTION SERVICES AGREEMENT
COMMUNITY BEHAVIORAL HEALTH OUTREACH AND ENGAGEMENT
SCOPE OF WORK**

PROGRAM OVERVIEW

CONTRACTOR shall provide community-based Outreach and Engagement, Stigma Reductions, and Suicide Prevention Services for Adults in Stanislaus County, with an emphasis in downtown Modesto and surrounding sphere of influence.

1.0 TARGET POPULATION

CONTRACTOR shall provide services for the following Mental Health Service Act priority populations:

- 1.1 Adults and older adults in underserved/unserved at-risk populations;
- 1.2 Individuals at-risk or exhibiting onset of serious mental illness or displaying mental illness early in its emergence and/or;
- 1.3 Families of individual's from the population of underserved/unserved who are at-risk for serious mental illness or exhibiting onset of serious mental illness or displaying mental illness early in its emergence.

2.0 STAFFING STRUCTURE AND PARTICIPANT TARGETS

CONTRACTOR shall ensure the following structure to ensure quality of care and effective service provision:

| Staffing Structure | Engagement | Outreach |
|--|------------|----------|
| .25FTE Program Administrator | --- | --- |
| .75FTE program coordinator | .30 | 150 |
| (2) .5FTE outreach and engagement specialist | 40 | 200 |
| Total Monthly Participants Target | 70 | 350 |

3.0 SERVICES

- 3.1 CONTRACTOR shall provide services that include, but are not limited to:
 - 3.1.1 Community based peer support services for individuals and their families (as applicable) experiencing the onset of serious mental illness or displaying mental illness early in its emergence;
 - 3.1.2 Operations using an integrated peer support model, including outreach and engagement efforts;
 - 3.1.3 Incorporating culturally appropriate methods utilizing community-defined, promising practices, and best practice of evidence-based approaches for targeted populations;
 - 3.1.4 Linking individuals receiving PEI and/or treatment services with community-based peer support;
 - 3.1.5 Include stigma and discrimination reduction strategies and mental health/wellness education and information dissemination and/or
 - 3.1.6 Referrals and access support to community mental health, PEI and treatment services as appropriate.

- 3.2 CONTRACTOR shall utilize the following Prevention Strategies:
 - 3.2.1 Outreach
 - 3.2.2 Engagement which includes peer support
 - 3.2.3 Referral access & linkage
- 3.3 CONTRACTOR shall design and implement activities to inform the wider community about behavioral issues, services, and community support. This outreach shall be made through individuals, events, and training.
- 3.4 CONTRACTOR shall design and implement services to identify at risk individuals, subsequent referrals to behavioral services and community supports, and assistance in getting the individuals engaged in recovery. This engagement shall be made through:
 - 3.4.1 Individual Engagement
 - 3.4.2 Referrals
 - 3.4.3 Behavioral Health Services Navigation
 - 3.4.4 Peer Support Development/Training
 - 3.4.5 Peer Support Group Facilitation
- 3.5 CONTRACTOR shall utilize community-based cultural and arts approaches as an engagement and outreach strategy.
- 3.6 CONTRACTOR shall provide clear information and education on access and linkage to behavioral health services and community supports.
- 3.7 CONTRACTOR shall deliver services utilizing non-stigmatizing and non-discriminatory approaches and language.
- 3.8 CONTRACTOR shall partner with Behavioral Health & Recovery Services (BHRS) to utilize broader public education campaign materials (pamphlets, handouts, PowerPoint materials, etc.) and the agreed upon evaluation tools.
- 3.9 As part of outreach and engagement, CONTRACTOR shall conduct a minimum of twelve (12) stigma reduction presentations using the public campaign materials including but not limited to "Each Mind Matters" Campaign (English and Spanish versions) and "Know the Signs" Campaign. Measurement tools to be determined by BHRS

4.0 PROGRAM PERFORMANCE MEASURES

- 4.1 CONTRACTOR agrees to meet the following performance levels during the term of this agreement:
 - 4.1.1 Seventy (70) Monthly individual (unduplicated) engagements
 - 4.1.2 On a monthly basis, 5% of Engagement contacts will be new individuals
 - 4.1.3 Three Hundred Fifty (350) Monthly Outreach contacts (Duplicated Individuals).
 - 4.1.4 Reduction in risk factors as measured by BHRS PEI Outcome Tool (Well-being Survey).
 - 4.1.5 Increased protective factors that may lead to improved mental, emotional, and relational functioning as measured by BHRS PEI Outcomes Tool (Well-being Survey)

- 4.1.6 Changes in attitudes, knowledge, and/or behavior related to seeking mental health services
 - 4.1.7 Changes in attitudes, knowledge, and/or behavior regarding suicide related to mental illness
 - 4.1.8 Increased services for underserved/unserved populations (Demographic Survey)
 - 4.1.9 Twelve (12) stigma reduction presentations shall have been conducted
- 4.2 CONTRACTOR shall continue to participate and collaborate in RBA Learning & Program performance and refine/change performance measures and tools used as needed.
- 4.3 CONTRACTOR shall collect and report quarterly Results-Based Accountability (RBA) data according to the following due date schedule:

| <u>Period</u> | <u>Due date</u> |
|---------------------------------|---------------------------|
| • Quarter 4 (April-June 2015): | Friday, July 31, 2015 |
| <u>Fiscal year 15-16</u> | |
| • Quarter 1 (July-September): | Friday, October 30, 2015 |
| • Quarter 2 (October-December): | Friday, January 29, 2016 |
| • Quarter 3 (January-March): | Friday, April 29, 2016 |
| • Quarter 4 (April-June) | Friday, July 29, 2016 |
| <u>Fiscal year 16-17</u> | |
| • Quarter 1 (July-September): | Friday, October 28, 2016 |
| • Quarter 2 (October-December): | Tuesday, January 31, 2017 |
| • Quarter 3 (January-March): | Friday, April 28, 2017 |
| • Quarter 4 (April-June) | Friday, July 31, 2017 |

All RBA quarterly reports will be submitted to PEIsubmit@stanbhhs.org

- 4.4 CONTRACTOR shall produce bi-annual narrative reports which will include performance measures. The mid-year reports are due February 15th of each year and the year end reports are due September 1st of each year. The first annual report will only have three months of work to report on, as it is for the last three months in the Fiscal Year 14-15. Narrative reports shall be submitted electronically to COUNTY at contracts@stanbhhs.org
- 4.5 CONTRACTOR shall have a representative attend RBA trainings and/or Learning Groups, monitoring meetings and/or technical assistance (TA) sessions.
- 4.6 CONTRACTOR will provide demographic and wellbeing information using tools provided by or approved by COUNTY, following the administration and submission schedule developed by Behavioral Health and Recovery Services.
- 4.7 CONTRACTOR will continue to work with COUNTY with regards to CONTRACTOR's Results-Based Accountability (RBA) performance outcome measures which will be monitored regularly.

5.0 BILLING AND PAYMENT

- 5.1 COUNTY shall reimburse CONTRACTOR for services delivered under the terms of this Agreement through the following funding sources: Mental Health Services Act- Prevention and Early Intervention.
- 5.2 In consideration of CONTRACTOR's provision of services required under this Agreement, COUNTY shall reimburse CONTRACTOR an amount not to exceed the Contract Maximum of \$255,980 for salaries, benefits and other operating costs. \$40,858 of the \$255,980 Contract Maximum has been allocated as the maximum available funds for the initial contract time period of April 1, 2015 through June 30, 2015. Any monies from this three month time period not expended may be consumed in remaining two fiscal year contract periods.
- 5.3 The monthly invoice shall be equal to the monthly program costs for delivering all the services required by this Agreement. The CONTRACTOR shall provide a monthly expenditure report to accompany the invoice in support of the program costs on the invoice.
- 5.4 COUNTY shall reimburse CONTRACTOR for any undisputed invoices, which COUNTY and CONTRACTOR agree represent the costs of delivering the services required under the terms of this Agreement for the period covered by the invoice, within 30 days of invoice receipt.
- 5.5 CONTRACTOR shall submit an invoice electronically to abhrs@stanbhrs.org or by mail to the following address:
- Stanislaus County Behavioral Health & Recovery Services (BHRS)
800 Scenic Drive, Building 4
Modesto, Ca 95350
Attention: Account Payable
- 5.6 CONTRACTOR shall provide COUNTY a Fiscal Year Expenditure Budget to BHRS Contract office on the following schedule:
- FY 15-16 (July 1, 2015 through June 30, 2016) due August 3, 2015
- FY16-17 (July 1, 2016 through June 30, 2017) due August 1, 2016

6. NON-DISCRIMINATION

In reference to Section 11, Nondiscrimination, under Terms & Conditions of this Agreement, is deleted in its entirety and replace with the following:

11. Nondiscrimination

11.1 During the performance of this Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their

employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Council implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

11.2 Consistent with the requirements of applicable Federal or State Law, the CONTRACTOR shall not engage in any unlawful discriminatory practices in the admission of clients, assignment of accommodations, treatment, evaluation, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age (over 40), sexual preference, or mental or physical disability (including individuals with AIDS or those with a record of or who are regarded as having a substantially limiting impairment), or medical condition (cancer-related), pregnancy related condition, or political affiliation or belief. This policy shall be in writing, in English and Spanish. It shall be posted in all public areas.

7. 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.

8. TERM

These services shall commence on April 1, 2015 and continue through June 30, 2017.

9. COMPLIANCE

Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or non-procurement programs from having a relationship with Contractor.

10. DUPLICATE COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement

BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply with the privacy and security requirements of Title II of the Health Insurance Portability and Accountability Act of 1996, (Public Law 104-191), also known as "HIPAA", and Title XIII of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), "the ARRA/HITECH Act" or "the HITECH Act", as these laws may be subsequently amended, and implementing regulations enacted by the Department of Health and Human Services at 45 CFR Parts 160-164, and, regulations enacted with regard to the HITECH Act. The foregoing laws and rules are sometimes collectively referred to hereafter as "HIPAA".

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 defined in the HIPAA and HITECH Statutes and Regulations.

1.1 "Breach" shall mean the unauthorized acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

1.1.1 **Exceptions.** The term "Breach" does not include:

1.1.1.1 Any unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and such information is not further acquired, accessed, used, or disclosed by any person; or

1.1.1.2 Any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and

1.1.1.3 Any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

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

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

1.4 "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).

1.5 "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.

1.6 "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR, Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

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

1.8 “**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.

1.9 “**Security or Security measures**” encompass all of the administrative, physical, and technical safeguards in an information system.

1.10 “**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 Behavioral Health and Recovery Services 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.

6. Breach Reporting

6.1 During the term of the agreement, BA shall notify COUNTY, in writing, within five (5) business days of the discovery of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which the BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws and regulations. A breach shall be treated as discovered by the BA as of the first day on which such breach or suspected breach is known to the BA (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the BA) or should reasonably have been known to the BA to have occurred. BA shall take (a) prompt corrective action to cure any Breach, (b) investigate or fully participate in an investigation of the suspected or actual breach of security, (c) assist the COUNTY in compliance with the Notification in The Case Of Breach requirements of Section 13402 of the HITECH Act, and (d) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Notification of Breach shall be made to:

**BHRS Privacy Officer
Behavioral Health and Recovery Services
800 Scenic Drive
Modesto, CA 95350
(209) 525-6225**

6.2 Reports of suspected and actual breaches to COUNTY shall include the following, at a minimum:

- a. Identify each individual whose unsecured protected health information has been, or is reasonably believed by BA to have been, accessed, acquired, used, or disclosed during the breach.
- b. Identify the nature of the Breach.
- c. Identify the date of the Breach.
- d. Identify the date of discovery of the Breach.
- e. Identify which elements of PHI were breached or were part of the Breach.
- f. Identify who was responsible for the Breach and who received the PHI.
- g. Identify what corrective actions the BA took or will take to prevent further incidents of Breach.
- h. Identify what BA did or will do to mitigate any adverse affects of the Breach.
- i. Identify BA contact individual and information for COUNTY to obtain additional information, if required.
- j. Provide copies of any Individual Notice, Media Notice, Notice to Secretary, or Posting on HHS Public Website that BA may have made pursuant to the HITECH Act.
- k. Provide such other information as COUNTY may reasonably request regarding the Breach.

7. 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.

8. Access to PHI

8.1 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.

8.2 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).

9. 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.

10. 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.

11. Retention, Transfer and Destruction of Information

11.1 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.

12. 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.

13. 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.

14. Continuing Privacy and Security Obligation

BA's obligation to protect the privacy and security of the PHI, including all copies and any data derived from this Agreement that may be individually identifiable, shall be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.

15. 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.

16. Interpretation

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

Exhibit C

Department of Health Care Services Mental Health Act Additional Terms and Conditions

To the extent the funds provided by the Department of Health Care Services (DHCS) are used under the Mental Health Act, the following terms of this Exhibit are used and apply:

1. **Service, Administrative and Operational Requirements**

A. Contractor shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which the contractor offers services to non-Medi-Cal beneficiaries. If the Contractor only serves Medi-Cal beneficiaries, the Contractor shall offer hours of operation that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered.

2. **Provider Selection and Certification**

A. Contractor shall comply with provisions of 42 C.F.R. §§ 455.104, 455.105, 1002.203, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.

B. Contractor shall comply with provisions of 42 C.F.R. § 438.214, which relates to the implementing of written policies and procedures for selection and retention of providers.

3. **Requirements for Day Treatment and Day Rehabilitation**

If the services to be delivered under the terms of this agreement include day treatment intensive or day rehabilitation, the CONTRACTOR shall have a written description of the day treatment intensive and/or day rehabilitation program that complies with the following:

A. Contractor shall request payment authorization for day treatment intensive and day rehabilitation services in advance of service delivery under the following conditions:

- 1) Day treatment or day rehabilitation will be provided for more than five days a week;
- 2) At least every three months for continuation of day treatment intensive;
- 3) At least every six months for continuation of day rehabilitation;

4) Request authorization for mental health services, as defined in Cal. Code Regs. Tit. 9, §1810.227, provided concurrently with day treatment or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal.Code Regs., Tit.9, §1810.216 and §1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.

B. Contractor shall assure that the advance payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day treatment intensive or day rehabilitation services.

C. Contractor shall meet the requirements of Cal.Code Regs. Tit. 9, § §1840.318, 1840.328, 1840.350 and 1840.352

D. Contractor shall include, at a minimum, the following day treatment intensive and day rehabilitation service components:

1) *Community meetings*. These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic milieu, and shall actively involve staff and beneficiaries. Relevant discussions items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:

2) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy;

a) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, and a registered nurse, psychiatric technician, licensed vocational nurse or mental health rehabilitation specialist.

b) *Therapeutic milieu*. This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model and reinforce constructive interactions involving beneficiaries in the overall program. For example, beneficiaries are provided with opportunities to lead community meetings and to provide feedback to peers. The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively

with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.

c) *Process groups.* These groups, facilitated by staff, shall assist each beneficiary to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.

d) *Skill-building groups.* In these groups, staff shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.

e) *Adjunctive therapies.* These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able to utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan,

E. Day treatment intensive shall additionally include:

1) *Psychotherapy.* Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waived staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.

2) *Mental Health Crisis Protocol.* Contractor shall ensure that there is an established protocol for responding to beneficiaries experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the beneficiary's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the beneficiary is linked to an outside crisis service.

3) *Written Weekly Schedule.* Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.

F. *Staffing requirements.* Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9 §1840.350, for day treatment intensive, and Cal. Code Regs., tit. 9 §1840.352 for day rehabilitation. For day treatment intensive, staff shall include one staff person whose scope of practice includes psychotherapy.

1) Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).

2) At least one staff person shall be present and available to the group in the therapeutic milieu for all scheduled hours of operation.

3) Day treatment intensive and day rehabilitation programs shall maintain documentation that enables the County and DHCS to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as a staff of a group home, a school, or another mental health treatment program). There shall be documentation of the scope of responsibilities for these staff and the specific time in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.

G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, Contractor will

only receive Medi-Cal reimbursement if beneficiary is present for at least 50% of scheduled hours of operation for that day. A separate entry is required and shall be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, Contractor is responsible for re-evaluating the beneficiary's need for the day rehabilitation or day treatment intensive program, and for taking appropriate action.

- H. *Documentation Standards.* Day treatment intensive and day rehabilitation shall meet the documentation standards described in Section 11 of this exhibit. The documentation shall include the date of service, signature of person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, or a registered nurse who is either staff to the day treatment intensive program or the person directing the services.
- I. Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary's community reintegration. Contractor shall ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.
- J. *Written Program Description.* Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe the specific activities of each service and reflects each of the required components of the services as described in this section.
- K. *Additional higher or more specific standards.* COUNTY shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the County's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically necessary day treatment intensive and day rehabilitation.
- L. *Continuous Hours of Operation.* Contractor shall apply the following when claiming for day treatment intensive and day rehabilitation services:

- 1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.
- 2) A full day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.
- 3) Although the beneficiary must receive face to face services on a full day or half day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.
- 4) The requirement for continuous hours of operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. Contractor shall not count these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

4. Disclosures.

Contractor shall submit the disclosures below to the County BHRS Contracts Manager regarding the network providers' (disclosing entities') ownership and control. Contractor must submit updated disclosures to the BHRS Contracts Manager upon submitting the provider application, before entering into or renewing a contract with the County, and within 35 days after any change in the subcontract/network provider's ownership or upon request by the County.

A. Disclosures to be provided:

- 1) The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
- 2). Date of birth and Social Security Number (in the case of an individual);
- 3). Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);
- 4). Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to

another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;

5) The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and

6) The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

B. Disclosures Related to Business Transactions. Contractor must submit disclosures and updated disclosures to the County including information regarding certain business transactions within 35 days, upon request.

1) The following information must be disclosed:

a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,

b) Any significant business transactions between the Contractor and any subcontractor, during the 5 year period ending on the date of the request.

C. Disclosures Related to Persons Convicted of Crimes. Contractor shall submit the following disclosures to the County regarding the Contractor's management:

1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a) (1), (2).)

2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. §455.106(a) (1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. §455.101.

3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the County's request.

5. Beneficiary Liability for Payment

A. Pursuant to Cal. Code Regs., tit.9, § 1810.365, the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with 42 C.F.R. § 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

6. Audits and Recovery of Overpayments

A. Contractor shall be subject to audits and/or reviews, including client record reviews, by the Department Health Care Services.

7. Federal Equal Opportunity Requirements

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without

- discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- B. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
 - C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - D. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - E. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - F. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the provisions of Paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

8. Travel and Per Diem Reimbursement

- A. CONTRACTOR reimbursement for travel and per diem expenses under this agreement shall be no higher than the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary.

9. Procurement Rules

A. Equipment/Property definitions

Wherever the term equipment and/or property is used, the following definitions shall apply:

- 1) Major equipment/property: A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

- 2) Minor equipment/property: A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this agreement.

B. Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

- 1) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
- 2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
- 3) Procurements shall be conducted in a manner that provides for all of the following:
 - a. Avoid purchasing unnecessary or duplicate items;
 - b. Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured;
 - c. Take positive steps to utilize small and veteran owned businesses.
- 4) Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager and the BHRS Contracts Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- 5) In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or submission of paid vendor receipts for any purchase, regardless of dollar amount, DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determined to be unnecessary in carrying out performance under this agreement.
- 6) For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor for inspection or audit.

10. **Equipment/Property Ownership/Inventory/Disposition**
- A. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
 - B. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property
 - C. .In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor shall immediately file a theft report with the appropriate police agency and Contractor shall promptly submit one copy of the theft report to the BHRS Contracts Manager.

11. **Motor Vehicles**
- The purchase of a vehicle with DHCS funds under this agreement requires that a written request be submitted to the BHRS Contracts Manager and prior written BHRS department approval and authorization must be given prior to the purchase of vehicle.

12. **Income Restrictions**
- Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to BHRS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by BHRS under this Agreement.

13. **Audit and Record Retention**
(Applicable to agreements in excess of \$10,000)
- A. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
 - B. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United

States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- C. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- D. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

14. Site Inspection

- A. The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premise of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

15. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds)

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of

congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

- B. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

16. Intellectual Property Rights

- A. Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- B. Contractor agrees to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor, or DHCS and which result directly or indirectly from this Agreement or any subcontract.

17. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/sub awards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences;

- portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
 - C. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

18. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

- A. Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

19. Use of Small, Minority Owned and Women's Businesses

- A. Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- 1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- 2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- 3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- 4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development

Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

20. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements)

- A. By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

21. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations)

- A. Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.
- B. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

As used herein, fringe benefits do not include

- 1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
- 2) Director's and executive committee member's fees
- 3) Incentive awards and/or bonus incentive pay.
- 4) Allowances for off-site pay
- 5) Location allowances
- 6) Hardship pay
- 7) Cost-of-living differentials

- B. Specific allowable fringe benefits include:

- 1) Fringe benefits in the form of employer contribution for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI) employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- 2) To be an allowable fringe benefit, the cost must meet the following criteria:
 - a) Be necessary and reasonable for the performance of the Agreement;
 - b) Be determined in accordance with generally accepted

- accounting principles;
- c) Be consistent with policies that apply uniformly to all activities of the Contractor.
- 3) Contractor agrees that all fringe benefits shall be at actual cost.
 - 4) Earned/Accrued Compensation
 - a) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Example No. 1.
 - b) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Example No. 2.
 - c) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Example No. 3.

Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks)

Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to

DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

23. Lobbying Prohibition

(Applicable to all sub awards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more)

A. Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan or cooperative agreement.

24. Patient Rights

Pursuant to 42 C.F.R. § 438.100, Contractor shall take beneficiaries rights into account when providing services, including the right to:

- A. Receive information in accordance with 42 C.F.R. § 438.10.
- B. Be treated with respect and with due consideration for his or her dignity and privacy.
- C. Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.
- D. Participate in decisions regarding his or her health care, including the right to refuse treatment.
- E. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- F. Request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.
- G. To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.
- H. To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.