

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

DEPT: Behavioral Health And Recovery Services BOARD AGENDA #: *B-7

AGENDA DATE: July 26, 2016

SUBJECT:

Approval of a Professional Services Agreement with Kings View Corporation for Tele-Psychiatry Services During Fiscal Year 2016-2017

BOARD ACTION AS FOLLOWS:

No. 2016-384

On motion of Supervisor O'Brien, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: Chiesa

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: Elizabeth A. King
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Behavioral Health And Recovery Services BOARD AGENDA #: *B-7
Urgent Routine AGENDA DATE: July 26, 2016

CEO CONCURRENCE: pht 4/5 Vote Required: Yes No

SUBJECT:
Approval of a Professional Services Agreement with Kings View Corporation for Tele-Psychiatry Services During Fiscal Year 2016-2017

STAFF RECOMMENDATIONS:

1. Approve an agreement with Kings View Corporation for provision of Tele-Psychiatry Services effective August 8, 2016 through June 30, 2017.
2. Authorize the Behavioral Health Director, or his/her designee, to sign the agreement, and any amendments adding services and payment for services up to \$75,000, with Kings View Corporation for Tele-Psychiatry Services.

DISCUSSION:

Behavioral Health and Recovery Services (BHRS) is experiencing a significant shortage of qualified psychiatric providers. Psychiatric providers are in short supply throughout the Nation and locally as well. Recently, a contract psychiatrist has left the County and a Nurse Practitioner is also leaving the County. This comes at a time when BHRS is already running significantly short in terms of psychiatric provider coverage. The Department has also been unable to fill behind two other full-time psychiatrists who have left in the last 18 months. One psychiatrist, who retired in 2015, was authorized to return immediately to provide limited coverage due to the doctor shortage, and she is still working. The Department is very mindful to insure that she does not exceed the maximum hours allowed a retiree.

The shortage is impacting several programs. The Integrated Forensic Team (IFT), which includes staffing for Community Corrections Partnership clients, ideally should have a combined psychiatric coverage of close to 40 hours but has to make do with only about 10 hours of doctor time, with part of that through temporary agency (locum) providing tele-psychiatry coverage. The Department's new innovation program for Co-occurring Disorder does not have any assigned psychiatrist, requiring the Medical Director to provide time to cover that program; this in addition to his regular duties and other clinic time. The outcome of the shortage is that it has been difficult to provide medication access for new clients coming in to the Behavioral Health system and to have follow up clients be seen on a timely basis.

Access to locum psychiatrists is also very limited. It has been very difficult to get onsite coverage even on a temporary basis or to find temporary tele-psychiatry coverage, causing disruption in treatment due to frequent changes.

Approval of a Professional Services Agreement with Kings View Corporation for Tele-Psychiatry Services During Fiscal Year 2016-2017

Kings View Corporation has been helping various California counties with consistent Tele-psychiatry coverage for several years. They have a proven record of finding qualified Tele-Psychiatrists for several counties. As of now they are contracted with Trinity County, Tulare County, San Benito County, Alpine County and Mariposa County just to name a few. The psychiatric coverage they provide is for relatively long periods of time, as opposed to the mostly short time locum assignments, thus minimizing the disruption in care.

Tele psychiatry is the delivery of psychiatric assessment and care through telecommunications technology. The proposed contract with Kings View Corporation is on an hourly basis with no other fees involved in using their psychiatrists. They provide their own malpractice coverage and have their own team for technical support. Their psychiatrists are familiar with our Electronic Health Record system since they work in counties which use the same one. There is also flexibility in terms of our obligation to use their psychiatrists. If the department identifies psychiatrists for fulltime employment the county would retain the right to request that their psychiatrist be withdrawn within 30 days so that we can have a county psychiatrist fill the position.

The Department will continue to seek full time psychiatrists needed for our patient care responsibilities. There is much competition with the private sector, state facilities in the local area as well, which presents a challenge in the County's recruitment efforts due to the competition and various compensation differences. There are ongoing contracts with various recruiting firms and ongoing advertisements for psychiatrist in at least two renowned psychiatric magazines that are circulated widely among psychiatrists all over the county. Extensive search efforts have produced very limited inquiries for the vacancies. In an attempt to make the position competitive, BHRS has worked extensively to have almost all outpatient clinics qualify under the Health Resources and Services Administration (HRSA) loan forgiveness program, which would make this more attractive to new graduates with large medical school loans. The Department will continue its recruitment efforts to seek psychiatric providers.

POLICY ISSUE:

Approval of this agreement is in compliance with the Board of Supervisors' Contract Reporting Policy, approved on January 24, 2006 and later revised on March 22, 2011, which states:

"Departments are required to obtain approval by the Board of Supervisors for any contract or agreement where the total cumulative compensation exceeds \$100,000. For purposes of this policy, cumulative refers to the total compensation paid by an individual department in the report year and the two fiscal years immediately prior thereto, where that has been no break in contractual services over 6 months."

FISCAL IMPACT:

The total amount of the agreement with Kings View Corporation is \$410,000 for 1,577 hours. The hourly rate for this service for Psychiatrists equates to \$260 an hour and it is recognized that the availability of contract providers via tele-psychiatry is essential to provide required patient care. Appropriations and estimated revenue to fund this agreement is included in the BHRS Adopted Proposed Budget for Fiscal Year 2016-2017. There is no impact to the County General Fund.

Approval of a Professional Services Agreement with Kings View Corporation for Tele-Psychiatry Services During Fiscal Year 2016-2017

Cost of recommended action:		\$ 410,000
Source(s) of Funding:		
1991 Realignment	\$205,000	
Mental Health Services Act	\$205,000	
Funding Total:		\$ 410,000
Net Cost to County General Fund		\$ -

Fiscal Year:	2016-2017
Budget Adjustment/Appropriations needed:	No

Fund Balance as of 6/30/2016	
Behavioral Health and Recovery Services	\$9,752,603
Mental Health Services Act	\$24,432,928

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions support the Board's priorities of A Healthy Community, Effective Partnerships, and Efficient Delivery of Public Services by contracting with mental health providers to deliver the needed services at an appropriate level of care in the most cost effective manner.

STAFFING IMPACT:

Existing staff will provide contract oversight and monitoring.

CONTACT PERSON:

Madelyn Schlaepfer, Ph.D., Behavioral Health Director Telephone: (209) 525-6205

ATTACHMENT(S):

1. Agreement with Kings View Corporation

Attachment 1

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Agreement for Professional Services is made and entered into by and between the County of Stanislaus ("County") and Kings View Corporation, a California not-for-profit corporation ("Consultant"), this agreement is effective the date of the last signature.

Introduction

WHEREAS, the County has a need for services involving tele-psychiatry;

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

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 Consultant 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**, which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; 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 Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, 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. The County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the County's reuse of the documents and drawings prepared by the Consultant under this Agreement.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner 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 Consultant; provided, however, that such schedule is subject to review by and concurrence of the County.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any

representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.

1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant not the County.

2. Consideration

2.1 The Consultant shall be compensated on either a time and materials basis or a lump sum basis, as provided in Exhibit A attached hereto.

2.2 Except as expressly provided in this Agreement, Consultant 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, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant 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 The Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

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

3. Term

3.1 The term of this Agreement shall be from the date 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 The County may terminate this agreement upon 30 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned

and reasonable costs necessarily incurred by the Consultant as provided in Paragraph 2 herein, subject to any applicable setoffs.

3.4 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant 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 Consultant at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

6. Insurance

6.1 Consultant 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. Commercial 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 Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.

6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents or representatives 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 and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant 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 Consultant will comply with such provisions before commencing the performance of the work of this Agreement. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County, its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition 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 Consultant 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 Consultant 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 Consultant's defense and indemnification obligations as set forth in this Agreement.

6.3 The Consultant shall include County, its Officers, Directors, Officials, Agents, Employees and volunteers as Additional Insureds under the General Liability and Auto policy and shall supply specific endorsements for same. The Additional Insured endorsement under the General Liability policy will be the Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization ISO Form CG2010 with the current applicable revision date. The Additional Insured endorsement under the Auto Liability will be "where required by written contract".

6.4 The Consultant's insurance coverage shall be primary insurance regarding County and County's officers, officials and employees. Any insurance or self-insurance maintained by County or County's officers, officials and employees shall be excess of Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its officers, directors, officials, agents, employees and volunteers. Consultant'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. Any available insurance proceeds in excess of the specified minimum limits required by this Agreement shall be available to County for defense and damages. The indemnity and insurance sections are stand alone and not dependent on each other for coverage limits

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 Consultant'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 Consultant 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 Consultant 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 Consultant begins performance of its obligations under this Agreement, Consultant 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 Consultant. 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 Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Consultant 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 Consultant or Consultant'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. Notwithstanding the foregoing, Consultant's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

7.2 Consultant'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 Consultant to procure and maintain a policy of insurance.

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

7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;

(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

8. Status of Consultant

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, 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, Consultant 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 Consultant. It is understood by both Consultant 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 Consultant 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 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant 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 Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period

service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. 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 Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any Scope of Services made a part hereof, 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.

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

8.8 As an independent contractor, Consultant 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 Consultant 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 Consultant. 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 Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

11.1. During the performance of this Agreement, Consultant 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, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Consultant 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 non-discrimination 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.

11.2 Consultant shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11.3 Consultant shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Consultant's delivery of services.

12. Assignment

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant 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 Consultant 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
Attention: Contracts

800 Scenic Drive
Modesto, CA 95350

To Contractor: Kings View Corporation
7170 North Financial Drive
Fresno, CA 93720

15. Conflicts

Consultant 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 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.

(SIGNATURES SET FORTH ON FOLLOWING PAGE)

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

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

KINGS VIEW CORPORATION

Madelyn Schlaepfer 7-28-2014
Madelyn Schlaepfer, Ph.D. Date
Behavioral Health Director

Leon Hoover Date
Chief Executive Officer

APPROVED AS TO FORM:
John P. Doering, County Counsel

for
Marc Hartley
Deputy County Counsel

BOS Item Number: 2016-384, July 26, 2016

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

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

KINGS VIEW CORPORATION

Madelyn Schlaepfer, Ph.D. Date
Behavioral Health Director

 7/6/2016

Leon Hoover Date
Chief Executive Officer

APPROVED AS TO FORM:
John P. Doering, County Counsel

Marc Hartley
Deputy County Counsel

BOS Item Number: 2016-384, July 26, 2016

1. SCOPE OF WORK

The Contractor shall recruit and provide qualified psychiatrists as available and as needed for tele-psychiatry consultations to County patients under the following terms and conditions:

- 1.1 County requires tele-psychiatrist to use County Electronic Health Record (EHR) and County shall be responsible for any hardware and software costs related to providing the tele-psychiatrist access to the County EHR.
- 1.2 County agrees to not further employ or contract with Psychiatrists provided through the tele-psychiatry services of Contractor for a period of six months following the last date of any tele-psychiatry services provided to the County by that Psychiatrist, unless provided by Contractor or agreed to in writing by Contractor.

2. COMPLIANCE

- 2.1 Contractor shall comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and Security Standards. See Exhibit B.
- 2.2 Contractor shall not allow services to be provided under the terms of this Agreement by any officer, employee, subcontractor, agent or any other individual or entity that is on the List of Excluded Individuals/Entities maintained by the U. S. Department of Health and Human Services, Office of the Inspector General (OIG), or the California State Medi-Cal Suspended and Ineligible Provider List (S&I), maintained by the California Department of Health Care Services.
 - 2.2.1 Contractor shall insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section at the time of hiring.
 - 2.2.2 Contractor shall thereafter semi-annually insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section.
 - 2.2.3 Contractor shall immediately notify the County upon discovery of any officer, employee, subcontractor, agent or other individual or entity who are found on either of the two lists in this section.
 - 2.2.4 County provides to Contractor the following references to the two lists found in this section. County does not guarantee that these references will not change from time to time.

OIG list is currently found at the following web address:
<http://exclusions.oig.hhs.gov/>.

A link to the S&I list is currently found at the following web address:
<http://www.medi-cal.ca.gov/references.asp> near the bottom of the page click, on the "Suspended & Ineligible Provider List".

3. COMPENSATION

The Contractor shall be compensated for the services provided under this Agreement as follows:

- 3.1 Contractor shall be compensated only for the hours of services provided, based on the hours worked by the Contractor's employees or subcontractors, multiplied by two hundred and sixty dollars (\$260.00) per hour. However, the Contractor shall provide the County 30-days notice before any change in the rate schedule takes effect. Contractor shall invoice County monthly, in arrears, for the services provided the previous month. Undisputed invoices shall be due to the Contractor within 30 days of receipt.
- 3.2 The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$410,000, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.
- 3.3 Contractor shall submit invoices 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: Accounts Payable

4. INSURANCE

Exhibit A, Section 6 Insurance, Item 6.1.3 of the body of this Agreement is deleted in its entirety and replaced with the following:

6.1.3 Automobile Liability Insurance

Contractor has stated that no automobiles are currently being used in the provision of services required under this Agreement. Contractor agrees that if the current circumstances change at any time, Contractor shall be responsible for providing the required insurance as originally stated in this Agreement, and providing County with certificate(s) of insurance, or a copy of the policy if requested, and original endorsements.

5. 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.

6. TERM

These services shall be provided at the request of County, commencing on August 8, 2016 and continuing through June 30, 2017.

7. 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.

11.2 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.

11.3 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.

11.4 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 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.