

1 AGREEMENT FOR PROVISION OF
2 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH
3 SPECIAL TREATMENT PROGRAM SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 EXTENDED CARE HOSPITAL OF WESTMINSTER
8 JULY 1, 2019 THROUGH JUNE 30, 2020
9

10 THIS AGREEMENT entered into this 1st day of July 2019, which date is enumerated for purposes
11 of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and EXTENDED CARE
12 HOSPITAL OF WESTMINSTER, a California general partnership (CONTRACTOR). This Agreement
13 shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).
14

15 **W I T N E S S E T H:**
16

17 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Adult Mental
18 Health Skilled Nursing Facility with Special Treatment Program Services described herein to the
19 residents of Orange County; and

20 WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and
21 conditions hereinafter set forth:

22 NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

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REFERENCED CONTRACT PROVISIONS

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Term: July 1, 2019 through June 30, 2020
Period One means the period from July 1, 2019 through June 30, 2020

Maximum Obligation:
Period One Maximum Obligation: \$ 4,419,129
TOTAL MAXIMUM OBLIGATION: \$ 4,419,129

Basis for Reimbursement: Net Negotiated Amount

Payment Method: Monthly in Advance

CONTRACTOR DUNS Number: 33-069-0220

CONTRACTOR TAX ID Number: 13-9605794

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
Health Care Agency
Contract Services
405 West 5th Street, Suite 600
Santa Ana, CA 92701-4637

CONTRACTOR: Extended Care Hospital of Westminster
206 Hospital Circle
Westminster, CA 92683
Donna Meyer, Director of Operations
donna@westanaheimcc.com

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. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Agreement:

4	A. ARRA	American Recovery and Reinvestment Act of 2009
5	B. CCC	California Civil Code
6	C. CCR	California Code of Regulations
7	D. CEO	County Executive Office
8	E. CFR	Code of Federal Regulations
9	F. CHPP	COUNTY HIPAA Policies and Procedures
10	G. COI	Certificate of Insurance
11	H. DHCS	California Department of Health Care Services
12	I. DRS	Designated Record Set
13	J. EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
14	K. FTE	Full Time Equivalents
15	L. GAAP	Generally Accepted Accounting Principles
16	M. HCA	County of Orange Health Care Agency
17	N. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
18		Law 104-191
19	O. HITECH ACT	Health Information Technology for Economic and Clinical Health
20		Act, Public Law 111-005
21	P. HSC	California Health and Safety Code
22	Q. ISO	Insurance Services Office
23	R. LPS	Lanterman/Petris/Short (Act)
24	S. MHP	Mental Health Plan
25	T. MHIS	Mental Health Inpatient Services
26	U. NPI	National Provider Identifier
27	V. NPP	Notice of Privacy Practices
28	W. OMB	Federal Office of Management and Budget
29	X. OPM	Federal Office of Personnel Management
30	Y. PC	California Penal Code
31	Z. PHI	Protected Health Information
32	AA. PII	Personally Identifiable Information
33	AB. PRA	California Public Records Act
34	AC. SIR	Self-Insured Retention
35	AD. SNF	Skilled Nursing Facility
36	AE. STP	Special Treatment Program
37	AF. TBS	Therapeutic Behavioral Services

1	AG. TRC	Therapeutic Residential Center
2	AH. UMDAP	Uniform Method of Determining Ability to Pay
3	AI. UOS	Unit of Service
4	AJ. USC	United States Code
5	AK. WIC	State of California Welfare and Institutions Code

6

7 **II. ALTERATION OF TERMS**

8 A. This Agreement, together with Exhibit(s) A, B, and C attached hereto and incorporated herein,
9 fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the
10 subject matter of this Agreement.

11 B. Unless otherwise expressly stated in this Agreement, no addition to, or alteration of the terms of
12 this Agreement or any Exhibits, whether written or verbal, made by the parties, their officers, employees
13 or agents shall be valid unless made in the form of a written amendment to this Agreement, which has
14 been formally approved and executed by both parties.

15

16 **III. ASSIGNMENT OF DEBTS**

17 Unless this Agreement is followed without interruption by another Agreement between the parties
18 hereto for the same services and substantially the same scope, at the termination of this Agreement,
19 CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of
20 persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by
21 mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the
22 address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of
23 said persons, shall be immediately given to COUNTY.

24

25 **IV. COMPLIANCE**

26 A. ADMINISTRATOR has established a Compliance Program for the purpose of ensuring
27 adherence to all rules and regulations related to federal and state health care programs.

28 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the relevant HCA
29 policies and procedures relating to HCA's Compliance Program, HCA's Code of Conduct and General
30 Compliance Trainings.

31 2. CONTRACTOR has the option to adhere to HCA's Compliance Program and Code of
32 Conduct or establish its own, provided CONTRACTOR's Compliance Program and Code of Conduct
33 have been verified to include all required elements by ADMINISTRATOR's Compliance Officer as
34 described in subparagraphs below.

35 3. If CONTRACTOR elects to adhere to HCA's Compliance Program and Code of Conduct;
36 the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of award

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1 of this Agreement a signed acknowledgement that CONTRACTOR shall comply with HCA's
2 Compliance Program and Code of Conduct.

3 4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it
4 shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures
5 to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement.
6 ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's Compliance Program
7 and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to
8 meet said standards or shall be asked to acknowledge and agree to HCA's Compliance Program and
9 Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain
10 all required elements.

11 5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the
12 CONTRACTOR's Compliance Program and Code of Conduct contains all required elements,
13 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of
14 CONTRACTOR's Compliance Program, Code of Conduct and related policies and procedures.

15 6. Failure of CONTRACTOR to submit its Compliance Program, Code of Conduct and
16 relevant policies and procedures shall constitute a material breach of this Agreement. Failure to cure
17 such breach within sixty (60) calendar days of such notice from ADMINISTRATOR shall constitute
18 grounds for termination of this Agreement as to the non-complying party.

19 B. SANCTION SCREENING – CONTRACTOR shall adhere to all screening policies and
20 procedures and screen all Covered Individuals employed or retained to provide services related to this
21 Agreement to ensure that they are not designated as Ineligible Persons, as pursuant to this Agreement.
22 Screening shall be conducted against the General Services Administration's Excluded Parties List
23 System or System for Award Management, the Health and Human Services/Office of Inspector General
24 List of Excluded Individuals/Entities, and the California Medi-Cal Suspended and Ineligible Provider
25 List and/or any other list or system as identified by the ADMINISTRATOR.

26 1. Covered Individuals includes all contractors, subcontractors, agents, and other persons who
27 provide health care items or services or who perform billing or coding functions on behalf of
28 ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem
29 employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to
30 work more than one hundred sixty (160) hours per year; except that any such individuals shall become
31 Covered Individuals at the point when they work more than one hundred sixty (160) hours during the
32 calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are
33 made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and
34 procedures.

35 2. An Ineligible Person shall be any individual or entity who:

36 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in
37 federal and state health care programs; or

1 b. has been convicted of a criminal offense related to the provision of health care items or
2 services and has not been reinstated in the federal and state health care programs after a period of
3 exclusion, suspension, debarment, or ineligibility.

4 3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
5 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this
6 Agreement.

7 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-
8 annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that
9 its subcontractors use their best efforts to verify that they are eligible to participate in all federal and
10 State of California health programs and have not been excluded or debarred from participation in any
11 federal or state health care programs, and to further represent to CONTRACTOR that they do not have
12 any Ineligible Person in their employ or under contract.

13 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
14 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
15 CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing
16 services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an
17 Ineligible Person.

18 6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing
19 federal and state funded health care services by contract with COUNTY in the event that they are
20 currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency.
21 If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person,
22 CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY
23 business operations related to this Agreement.

24 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
25 entity is currently excluded, suspended or debarred, or is identified as such after being sanction
26 screened. Such individual or entity shall be immediately removed from participating in any activity
27 associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or
28 sanction(s) to CONTRACTOR for services provided by ineligible person or individual.
29 CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the
30 overpayment is verified by ADMINISTRATOR.

31 C. COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance Training
32 and Provider Compliance Training, where appropriate, available to Covered Individuals.

33 1. CONTRACTOR shall use its best efforts to encourage completion by Covered Individuals;
34 provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated
35 representative to complete all Compliance Trainings when offered.

36 2. Such training will be made available to Covered Individuals within thirty (30) calendar
37 days of employment or engagement.

1 3. Such training will be made available to each Covered Individual annually.

2 4. Each Covered Individual attending training shall certify, in writing, attendance at
3 compliance training. CONTRACTOR shall retain the certifications. Upon written request by
4 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

5 D. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

6 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
7 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner
8 and are consistent with federal, state and county laws and regulations. This includes compliance with
9 federal and state health care program regulations and procedures or instructions otherwise
10 communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or
11 their agents.

12 2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims
13 for payment or reimbursement of any kind.

14 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also
15 fully documented. When such services are coded, CONTRACTOR shall use accurate billing codes
16 which accurately describes the services provided and must ensure compliance with all billing and
17 documentation requirements.

18 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in
19 coding of claims and billing, if and when, any such problems or errors are identified.

20 5. CONTRACTOR shall promptly return any overpayments within forty-five (45) business
21 days after the overpayment is verified by the ADMINISTRATOR.

22
23 **V. CONFIDENTIALITY**

24 A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any
25 audio and/or video recordings, in accordance with all applicable federal, state and county codes and
26 regulations, as they now exist or may hereafter be amended or changed.

27 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this
28 Agreement are clients of the Orange County Mental Health services system, and therefore it may be
29 necessary for authorized staff of ADMINISTRATOR to audit client files, or to exchange information
30 regarding specific clients with COUNTY or other providers of related services contracting with
31 COUNTY.

32 2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written
33 consents for the release of information from all persons served by CONTRACTOR pursuant to this
34 Agreement. Such consents shall be obtained by CONTRACTOR in accordance with CCC, Division 1,
35 Part 2.6, relating to confidentiality of medical information.

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1 3. In the event of a collaborative service agreement between Mental Health services providers,
2 CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information,
3 from the collaborative agency, for clients receiving services through the collaborative agreement.

4 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
5 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and
6 interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the
7 confidentiality of any and all information and records which may be obtained in the course of providing
8 such services. This Agreement shall specify that it is effective irrespective of all subsequent
9 resignations or terminations of CONTRACTOR members of the [Board of Directors] or its designee or
10 authorized agent, employees, consultants, subcontractors, volunteers and interns.

11 **VI. CONFLICT OF INTEREST**

12 CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that
13 could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation shall
14 apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of
15 goods and services provided under this Agreement. CONTRACTOR's efforts shall include, but not be
16 limited to establishing rules and procedures preventing its employees, agents, and subcontractors from
17 providing or offering gifts, entertainment, payments, loans or other considerations which could be
18 deemed to influence or appear to influence COUNTY staff or elected officers in the performance of
19 their duties.
20

21 **VII. COST REPORT**

22 A. CONTRACTOR shall submit an individual and/or consolidated Cost Report to COUNTY no
23 later than sixty (60) calendar days following termination of this Agreement. CONTRACTOR shall
24 prepare the individual and/or consolidated Cost Report in accordance with all applicable federal, state
25 and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement.
26 CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services,
27 and funding sources in accordance with such requirements and consistent with prudent business
28 practice, which costs and allocations shall be supported by source documentation maintained by
29 CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event
30 CONTRACTOR has multiple Agreements for mental health services that are administered by HCA,
31 consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as
32 stipulated by ADMINISTRATOR. CONTRACTOR shall submit the consolidated Cost Report to
33 COUNTY no later than five (5) business days following approval by ADMINISTRATOR of all
34 individual Cost Reports to be incorporated into a consolidated Cost Report.
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1 1. If CONTRACTOR fails to submit an accurate and complete an individual and/or
2 consolidated Cost Report within the time period specified above, ADMINISTRATOR shall have sole
3 discretion to impose one or both of the following:

4 a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each
5 business day after the above specified due date that the accurate and complete individual and/or
6 consolidated Cost Report is not submitted. Imposition of the late penalty shall be at the sole discretion
7 of the ADMINISTRATOR. The late penalty shall be assessed separately on each outstanding individual
8 and/or consolidated Cost Report due COUNTY by CONTRACTOR.

9 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
10 pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the
11 accurate and complete individual and/or consolidated Cost Report is delivered to ADMINISTRATOR.

12 2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the
13 individual and/or consolidated Cost Report setting forth good cause for justification of the request.
14 Approval of such requests shall be at the sole discretion of ADMINISTRATOR and shall not be
15 unreasonably denied.

16 3. In the event that CONTRACTOR does not submit an accurate and complete individual
17 and/or consolidated Cost Report within one hundred and eighty (180) calendar days following the
18 termination of this Agreement, and CONTRACTOR has not entered into a subsequent or new
19 agreement for any other services with COUNTY, then all amounts paid to CONTRACTOR by
20 COUNTY during the term of the Agreement shall be immediately reimbursed to COUNTY.

21 B. The individual and/or consolidated Cost Report shall be the final financial and statistical report
22 submitted by CONTRACTOR to COUNTY, and shall serve as the basis for final settlement to
23 CONTRACTOR. CONTRACTOR shall document that costs are reasonable and allowable and directly
24 or indirectly related to the services to be provided hereunder. The individual and/or consolidated Cost
25 Report shall be the final financial record for subsequent audits, if any.

26 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,
27 less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set
28 forth in the Referenced Contract Provisions of this Agreement. CONTRACTOR shall not claim
29 expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and
30 COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR,
31 which is subsequently determined to have been for an unreimbursable expenditure or service, shall be
32 repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30)
33 calendar days of submission of the individual and/or consolidated Cost Report or COUNTY may elect
34 to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due
35 COUNTY.

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1 D. Unless approved by ADMINISTRATOR, costs that exceed the Statewide Maximum Allowance
2 (SMA) rates per Medi-Cal Unit of Services, as determined by the DHCS, shall be unreimbursable to
3 CONTRACTOR.

4 E. In the event that CONTRACTOR is authorized to retain unanticipated revenues as described in
5 the Budget Paragraph of Exhibit A to this Agreement, CONTRACTOR shall specify in the Cost Report
6 the services rendered with such revenues.

7 F. All Cost Reports shall contain the following attestation, which may be typed directly on or
8 attached to the Cost Report:

9
10 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and
11 supporting documentation prepared by _____ for the cost report period
12 beginning _____ and ending _____ and that, to the best of my
13 knowledge and belief, costs reimbursed through this Agreement are reasonable and
14 allowable and directly or indirectly related to the services provided and that this Cost
15 Report is a true, correct, and complete statement from the books and records of
16 (provider name) in accordance with applicable instructions, except as noted. I also
17 hereby certify that I have the authority to execute the accompanying Cost Report.

18
19 Signed _____
20 Name _____
21 Title _____
22 Date _____"

23
24 **VIII. DEBARMENT AND SUSPENSION CERTIFICATION**

25 A. CONTRACTOR certifies that it and its principals:

26 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or
27 voluntarily excluded by any federal department or agency.

28 2. Have not within a three-year period preceding this Agreement been convicted of or had a
29 civil judgment rendered against them for commission of fraud or a criminal offense in connection with
30 obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract
31 under a public transaction; violation of federal or state antitrust statutes or commission of
32 embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or
33 receiving stolen property.

34 3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state,
35 or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2.
36 above.

37 //

1 4. Have not within a three-year period preceding this Agreement had one or more public
2 transactions (federal, state, or local) terminated for cause or default.

3 5. Shall not knowingly enter into any lower tier covered transaction with a person who is
4 proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred,
5 suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless
6 authorized by the State of California.

7 6. Shall include without modification, the clause titled "Certification Regarding Debarment,
8 Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction," (i.e., transactions
9 with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in
10 accordance with 2 CFR Part 376.

11 B. The terms and definitions of this paragraph have the meanings set out in the Definitions and
12 Coverage sections of the rules implementing 51 F.R. 6370.

13 14 **IX. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS**

15 A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without
16 prior written consent of COUNTY. CONTRACTOR shall provide written notification of
17 CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to
18 ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation.
19 Any attempted assignment or delegation in derogation of this paragraph shall be void.

20 B. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the
21 prior written consent of COUNTY.

22 1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to
23 any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%)
24 of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an
25 assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
26 clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
27 Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

28 2. If CONTRACTOR is a for-profit organization, any change in the business structure,
29 including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
30 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
31 change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR
32 at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
33 delegation in derogation of this subparagraph shall be void.

34 3. If CONTRACTOR is a governmental organization, any change to another structure,
35 including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board
36 of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an
37

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1 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of
2 this subparagraph shall be void.

3 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
4 CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations
5 hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to
6 the effective date of the assignment.

7 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
8 CONTRACTOR shall provide written notification within thirty (30) calendar days to
9 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
10 governing body of CONTRACTOR at one time.

11 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
12 means of subcontracts, provided such subcontracts are approved in advance, in writing by
13 ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity
14 under subcontract, and include any provisions that ADMINISTRATOR may require.

15 1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a
16 subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract
17 subsequently fails to meet the requirements of this Agreement or any provisions that
18 ADMINISTRATOR has required.

19 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
20 pursuant to this Agreement.

21 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,
22 amounts claimed for subcontracts not approved in accordance with this paragraph.

23 4. This provision shall not be applicable to service agreements usually and customarily
24 entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional
25 services provided by consultants.

26 **X. DISPUTE RESOLUTION**

27 A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the
28 dispute concerning a question of fact arising under the terms of this Agreement is not disposed of in a
29 reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be
30 brought to the attention of the COUNTY Purchasing Agency by way of the following process:

31 1. CONTRACTOR shall submit to the COUNTY Purchasing Agency a written demand for a
32 final decision regarding the disposition of any dispute between the Parties arising under, related to, or
33 involving this Agreement, unless COUNTY, on its own initiative, has already rendered such a final
34 decision.

35 2. CONTRACTOR's written demand shall be fully supported by factual information, and, if
36 such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the
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1 demand a written statement signed by an authorized representative indicating that the demand is made in
2 good faith, that the supporting data are accurate and complete, and that the amount requested accurately
3 reflects the Agreement adjustment for which CONTRACTOR believes COUNTY is liable.

4 B. Pending the final resolution of any dispute arising under, related to, or involving this
5 Agreement, CONTRACTOR agrees to proceed diligently with the performance of services secured via
6 this Agreement, including the delivery of goods and/or provision of services. CONTRACTOR's failure
7 to proceed diligently shall be considered a material breach of this Agreement.

8 C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and
9 shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a
10 decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed
11 a final decision adverse to CONTRACTOR's contentions.

12 D. This Agreement has been negotiated and executed in the State of California and shall be
13 governed by and construed under the laws of the State of California. In the event of any legal action to
14 enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent
15 jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit
16 to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the
17 Parties specifically agree to waive any and all rights to request that an action be transferred for
18 adjudication to another county.

19 20 **XI. EMPLOYEE ELIGIBILITY VERIFICATION**

21 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and
22 regulations regarding the employment of aliens and others and to ensure that employees, subcontractors,
23 and consultants performing work under this Agreement meet the citizenship or alien status requirements
24 set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
25 subcontractors, and consultants performing work hereunder, all verification and other documentation of
26 employment eligibility status required by federal or state statutes and regulations including, but not
27 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently
28 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
29 covered employees, subcontractors, and consultants for the period prescribed by the law.

30 31 **XII. EQUIPMENT**

32 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all
33 property of a Relatively Permanent nature with significant value, purchased in whole or in part by
34 ADMINISTRATOR to assist in performing the services described in this Agreement. "Relatively
35 Permanent" is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or
36 over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital
37 Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and

1 other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained
2 PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to
3 phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of
4 Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be
5 depreciated according to GAAP.

6 B. CONTRACTOR shall obtain ADMINISTRATOR’s prior written approval to purchase any
7 Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR
8 shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting
9 documentation, which includes delivery date, unit price, tax, shipping and serial numbers.
10 CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each
11 purchased asset in an Equipment inventory.

12 C. Upon ADMINISTRATOR’s prior written approval, CONTRACTOR may expense to
13 COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To “expense,” in
14 relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it
15 is purchased. Title of expensed Equipment shall be vested with COUNTY.

16 D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part
17 with funds paid through this Agreement, including date of purchase, purchase price, serial number,
18 model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR,
19 and shall include the original purchase date and price, useful life, and balance of depreciated Equipment
20 cost, if any.

21 E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical
22 inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any
23 or all Equipment to COUNTY.

24 F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure
25 approved by ADMINISTRATOR and the Notices Paragraph of this Agreement. In addition,
26 CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of
27 Equipment are moved from one location to another or returned to COUNTY as surplus.

28 G. Unless this Agreement is followed without interruption by another agreement between the
29 parties for substantially the same type and scope of services, at the termination of this Agreement for
30 any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through
31 this Agreement.

32 H. CONTRACTOR shall maintain and administer a sound business program for ensuring the
33 proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

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XIII. FACILITIES, PAYMENTS AND SERVICES

1
2 A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance
3 with this Agreement. COUNTY shall compensate, and authorize, when applicable, said services.
4 CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the
5 minimum number and type of staff which meet applicable federal and state requirements, and which are
6 necessary for the provision of the services hereunder.

7 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
8 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation
9 for the appropriate Period as well as the Total Maximum Obligation. The reduction to the Maximum
10 Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an amount
11 proportionate to the number of days in which CONTRACTOR was determined to be unable to provide
12 services, staffing, facilities or supplies.

XIV. INDEMNIFICATION AND INSURANCE

13
14
15 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,
16 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special
17 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board
18 ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature,
19 including but not limited to personal injury or property damage, arising from or related to the services,
20 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is
21 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the
22 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and
23 COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request
24 a jury apportionment.

25 B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
26 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary
27 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.
28 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements
29 on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors
30 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance
31 subject to the same terms and conditions as set forth herein for CONTRACTOR.

32 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
33 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an
34 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
35 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
36 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
37 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor

1 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
 2 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
 3 by COUNTY representative(s) at any reasonable time.

4 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,
 5 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an
 6 amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the
 7 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report.

8 E. If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this
 9 Agreement, COUNTY may terminate this Agreement.

10 F. QUALIFIED INSURER

11 1. The policy or policies of insurance must be issued by an insurer with a minimum rating of
 12 A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current
 13 edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred,
 14 but not mandatory, that the insurer be licensed to do business in the state of California (California
 15 Admitted Carrier).

16 2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of
 17 Risk Management retains the right to approve or reject a carrier after a review of the company's
 18 performance and financial ratings.

19 G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum
 20 limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Technology Errors & Omissions	\$1,000,000 per claims made \$1,000,000 aggregate

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1 Professional Liability Insurance \$1,000,000 per claims made
 2 \$1,000,000 aggregate
 3

4 Sexual Misconduct Liability \$1,000,000 per occurrence
 5

6 H. REQUIRED COVERAGE FORMS

7 1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a
 8 substitute form providing liability coverage at least as broad.

9 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA
 10 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

11 I. REQUIRED ENDORSEMENTS

12 1. The Commercial General Liability policy shall contain the following endorsements, which
 13 shall accompany the COI:

14 a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at
 15 least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and
 16 agents as Additional Insureds.

17 b. A primary non-contributing endorsement evidencing that the CONTRACTOR's
 18 insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be
 19 excess and non-contributing.

20 2. The Network Security and Privacy Liability policy shall contain the following
 21 endorsements which shall accompany the Certificate of Insurance:

22 a. An Additional Insured endorsement naming the County of Orange, its elected and
 23 appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

24 b. A primary and non-contributing endorsement evidencing that the Contractor's
 25 insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be
 26 excess and non-contributing.

27 J. All insurance policies required by this Agreement shall waive all rights of subrogation against
 28 the County of Orange, its elected and appointed officials, officers, agents and employees when acting
 29 within the scope of their appointment or employment.

30 K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving
 31 all rights of subrogation against the County of Orange, its elected and appointed officials, officers,
 32 agents and employees.

33 L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
 34 cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation
 35 notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach
 36 of the Agreement, upon which the COUNTY may suspend or terminate this Agreement.

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1 M. If CONTRACTOR's Professional Liability, Technology Errors & Omissions and/or Network
2 Security & Privacy Liability are "Claims Made" policy(ies), CONTRACTOR shall agree to maintain
3 coverage for two (2) years following the completion of the Agreement.

4 N. The Commercial General Liability policy shall contain a "severability of interests" clause also
5 known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

6 O. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
7 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
8 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to
9 adequately protect COUNTY.

10 P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
11 CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY
12 incorporating such changes within thirty (30) calendar days of receipt of such notice, this Agreement
13 may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal
14 remedies.

15 Q. The procuring of such required policy or policies of insurance shall not be construed to limit
16 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of
17 this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

18 R. SUBMISSION OF INSURANCE DOCUMENTS

19 1. The COI and endorsements shall be provided to COUNTY as follows:
20 a. Prior to the start date of this Agreement.
21 b. No later than the expiration date for each policy.
22 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
23 changes to any of the insurance types as set forth in Subparagraph G. of this Agreement.

24 2. The COI and endorsements shall be provided to the COUNTY at the address as specified in
25 the Referenced Contract Provisions of this Agreement.

26 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance
27 provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall
28 have sole discretion to impose one or both of the following:

29 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
30 pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the
31 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
32 submitted to ADMINISTRATOR.

33 b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late
34 COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and
35 CONTRACTOR, until such time that the required COI and endorsements that meet the insurance
36 provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

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1 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from
2 CONTRACTOR's monthly invoice.

3 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any
4 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs
5 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.
6

7 **XV. INSPECTIONS AND AUDITS**

8 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
9 of the State of California, the Secretary of the United States Department of Health and Human Services,
10 the Comptroller General of the United States, or any other of their authorized representatives, shall have
11 access to any books, documents, and records, including but not limited to, financial statements, general
12 ledgers, relevant accounting systems, medical and client records, of CONTRACTOR that are directly
13 pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or conducting an
14 audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth
15 in the Records Management and Maintenance Paragraph of this Agreement. Such persons may at all
16 reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the
17 premises in which they are provided.

18 B. CONTRACTOR shall actively participate and cooperate with any person specified in
19 Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this
20 Agreement, and shall provide the above-mentioned persons adequate office space to conduct such
21 evaluation or monitoring.

22 C. AUDIT RESPONSE

23 1. Following an audit report, in the event of non-compliance with applicable laws and
24 regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement
25 as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement
26 appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in
27 writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.

28 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
29 by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said
30 funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of
31 the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement
32 is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
33 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
34 reimbursement due COUNTY.

35 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file
36 with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as
37 may be required during the term of this Agreement.

1 E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within
2 fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management,
3 financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the
4 cost of such operation or audit is reimbursed in whole or in part through this Agreement.

6 **XVI. LICENSES AND LAWS**

7 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
8 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,
9 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
10 required by the laws, regulations and requirements of the United States, the State of California,
11 COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify
12 ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the
13 pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers
14 and exemptions. Said inability shall be cause for termination of this Agreement.

15 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

16 1. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days
17 of the award of this Agreement:

18 a. In the case of an individual contractor, his/her name, date of birth, social security
19 number, and residence address;

20 b. In the case of a contractor doing business in a form other than as an individual, the
21 name, date of birth, social security number, and residence address of each individual who owns an
22 interest of ten percent (10%) or more in the contracting entity;

23 c. A certification that CONTRACTOR has fully complied with all applicable federal and
24 state reporting requirements regarding its employees;

25 d. A certification that CONTRACTOR has fully complied with all lawfully served Wage
26 and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

27 2. Failure of CONTRACTOR to timely submit the data and/or certifications required by
28 Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting
29 requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings
30 Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement;
31 and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute
32 grounds for termination of this Agreement.

33 3. It is expressly understood that this data will be transmitted to governmental agencies
34 charged with the establishment and enforcement of child support orders, or as permitted by federal
35 and/or state statute.

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1 C. CONTRACTOR shall comply with all applicable governmental laws, regulations, and
2 requirements as they exist now or may be hereafter amended or changed. These laws, regulations, and
3 requirements shall include, but not be limited to, the following:

- 4 1. ARRA of 2009.
- 5 2. WIC, Division 5, Community Mental Health Services.
- 6 3. WIC, Division 6, Admissions and Judicial Commitments.
- 7 4. WIC, Division 7, Mental Institutions.
- 8 5. HSC, §§1250 et seq., Health Facilities.
- 9 6. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
- 10 7. CCR, Title 9, Rehabilitative and Developmental Services.
- 11 8. CCR, Title 17, Public Health.
- 12 9. CCR, Title 22, Social Security.
- 13 10. CFR, Title 42, Public Health.
- 14 11. CFR, Title 45, Public Welfare.
- 15 12. USC Title 42. Public Health and Welfare.
- 16 13. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 17 14. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 18 15. 42 USC §1857, et seq., Clean Air Act.
- 19 16. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 20 17. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 21 18. Policies and procedures set forth in Mental Health Services Act.
- 22 19. Policies and procedures set forth in DHCS Letters.
- 23 20. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.
- 24 21. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
25 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for
26 Federal Awards.

27 D. CONTRACTOR shall at all times be capable and authorized by the State of California to
28 provide treatment and bill for services provided to Medi-Cal eligible clients while working under the
29 terms of this Agreement.

30 **XVII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

31 A. Any written information or literature, including educational or promotional materials,
32 distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related
33 to this Agreement must be approved at least thirty (30) days in advance and in writing by
34 ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written
35 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,
36 and electronic media such as the Internet.
37

1 B. Any advertisement through radio, television broadcast, or the Internet, for educational or
2 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this
3 Agreement must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

4 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly
5 available social media sites) in support of the services described within this Agreement,
6 CONTRACTOR shall develop social media policies and procedures and have them available to
7 ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all
8 forms of social media used to either directly or indirectly support the services described within this
9 Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as
10 they pertain to any social media developed in support of the services described within this Agreement.
11 CONTRACTOR shall also include any required funding statement information on social media when
12 required by ADMINISTRATOR.

13 D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement
14 by COUNTY, unless ADMINISTRATOR consents thereto in writing.

15 16 **XVIII. MAXIMUM OBLIGATION**

17 A. The Total Maximum Obligation of COUNTY for services provided in accordance with this
18 Agreement, and the separate Maximum Obligations for each period under this Agreement, are as
19 specified in the Referenced Contract Provisions of this Agreement, except as allowed for in
20 Subparagraph B. below.

21 B. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten
22 percent (10%) of Period One funding for this Agreement.

23 24 **XIX. MINIMUM WAGE LAWS**

25 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
26 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
27 federal or California Minimum Wage to all its employees that directly or indirectly provide services
28 pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that
29 all its contractors or other persons providing services pursuant to this Agreement on behalf of
30 CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum
31 Wage.

32 B. CONTRACTOR shall comply and verify that its contractors comply with all other federal and
33 State of California laws for minimum wage, overtime pay, record keeping, and child labor standards
34 pursuant to providing services pursuant to this Agreement.

35 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
36 where applicable, shall comply with the prevailing wage and related requirements, as provided for in
37 //

1 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
2 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

4 **XX. NONDISCRIMINATION**

5 **A. EMPLOYMENT**

6 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not
7 unlawfully discriminate against any employee or applicant for employment because of his/her race,
8 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
9 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
10 orientation, or military and veteran status. Additionally, during the term of this Agreement,
11 CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall
12 not unlawfully discriminate against any employee or applicant for employment because of his/her race,
13 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
14 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
15 orientation, or military and veteran status.

16 2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or
17 applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or
18 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection
19 for training, including apprenticeship.

20 3. CONTRACTOR shall not discriminate between employees with spouses and employees
21 with domestic partners, or discriminate between domestic partners and spouses of those employees, in
22 the provision of benefits.

23 4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for
24 employment, notices from ADMINISTRATOR and/or the United States Equal Employment
25 Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

26 5. All solicitations or advertisements for employees placed by or on behalf of
27 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration
28 for employment without regard to race, religious creed, color, national origin, ancestry, physical
29 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender
30 identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements
31 shall be deemed fulfilled by use of the term EOE.

32 6. Each labor union or representative of workers with which CONTRACTOR and/or
33 subcontractor has a collective bargaining agreement or other contract or understanding must post a
34 notice advising the labor union or workers' representative of the commitments under this
35 Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places available to
36 employees and applicants for employment.

37 //

1 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
2 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
3 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental
4 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
5 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
6 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
7 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9,
8 Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of
9 the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq., as applicable, and all
10 other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state
11 law and regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
12 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one
13 or more of the factors identified above:

- 14 1. Denying a client or potential client any service, benefit, or accommodation.
- 15 2. Providing any service or benefit to a client which is different or is provided in a different
16 manner or at a different time from that provided to other clients.
- 17 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by
18 others receiving any service or benefit.
- 19 4. Treating a client differently from others in satisfying any admission requirement or
20 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
21 any service or benefit.
- 22 5. Assignment of times or places for the provision of services.

23 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all clients
24 through a written statement that CONTRACTOR’s and/or subcontractor’s clients may file all
25 complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and
26 ADMINISTRATOR or COUNTY’s Patient Rights Office.

27 1. Whenever possible, problems shall be resolved informally and at the point of service.
28 CONTRACTOR shall establish an internal informal problem resolution process for clients not able to
29 resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with
30 CONTRACTOR either orally or in writing.

31 a. COUNTY shall establish a formal resolution and grievance process in the event
32 informal processes do not yield a resolution.

33 b. Throughout the problem resolution and grievance process, client rights shall be
34 maintained, including access to the Patients’ Rights Office at any point in the process. Clients shall be
35 informed of their right to access the Patients’ Rights Office at any time.

36 2. Within the time limits procedurally imposed, the complainant shall be notified in writing as
37 to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.

1 D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply
2 with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as
3 implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42
4 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of
5 discrimination against qualified persons with disabilities in all programs or activities; and if applicable,
6 as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together
7 with succeeding legislation.

8 E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall
9 intimidate, coerce or take adverse action against any person for the purpose of interfering with rights
10 secured by federal or state laws, or because such person has filed a complaint, certified, assisted or
11 otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to
12 enforce rights secured by federal or state law.

13 F. In the event of non-compliance with this paragraph or as otherwise provided by federal and
14 state law, this Agreement may be canceled, terminated or suspended in whole or in part and
15 CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal,
16 state or county funds.

17 18 **XXI. NOTICES**

19 A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements
20 authorized or required by this Agreement shall be effective:

21 1. When written and deposited in the United States mail, first class postage prepaid and
22 addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed
23 by ADMINISTRATOR;

24 2. When faxed, transmission confirmed;

25 3. When sent by Email; or

26 4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel
27 Service, or any other expedited delivery service.

28 B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of
29 this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed,
30 transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United
31 Parcel Service, or any other expedited delivery service.

32 C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of
33 becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such
34 occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or
35 damage to any COUNTY property in possession of CONTRACTOR.

36 D. For purposes of this Agreement, any notice to be provided by COUNTY may be given by
37 ADMINISTRATOR.

XXII. NOTIFICATION OF DEATH

1
2 A. Upon becoming aware of the death of any person served pursuant to this Agreement,
3 CONTRACTOR shall immediately notify ADMINISTRATOR.

4 B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain
5 the name of the deceased, the date and time of death, the nature and circumstances of the death, and the
6 name(s) of CONTRACTOR's officers or employees with knowledge of the incident.

7 1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by
8 telephone immediately upon becoming aware of the death due to non-terminal illness of any person
9 served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for
10 purposes of computing the time within which to give telephone notice and, notwithstanding the time
11 limit herein specified, notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

12
13 a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send
14 via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming
15 aware of the death due to non-terminal illness of any person served pursuant to this Agreement.

16 b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written
17 report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within
18 forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served
19 pursuant to this Agreement.

20 C. If there are any questions regarding the cause of death of any person served pursuant to this
21 Agreement who was diagnosed with a terminal illness, or if there are any unusual circumstances related
22 to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this
23 Notification of Death Paragraph.

XXIII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

24
25
26 A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in
27 whole or in part by the COUNTY, except for those events or meetings that are intended solely to serve
28 clients or occur in the normal course of business.

29 B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance
30 of any applicable public event or meeting. The notification must include the date, time, duration,
31 location and purpose of the public event or meeting. Any promotional materials or event related flyers
32 must be approved by ADMINISTRATOR prior to distribution.

XXIV. RECORDS MANAGEMENT AND MAINTENANCE

33
34
35 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
36 of this Agreement, prepare, maintain and manage records appropriate to the services provided and in
37 accordance with this Agreement and all applicable requirements.

1 B. CONTRACTOR shall implement and maintain administrative, technical and physical
2 safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of
3 PHI in violation of the HIPAA, federal and state regulations and/or CHPP. CONTRACTOR shall
4 mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in
5 violation of federal or state regulations and/or COUNTY policies.

6 C. CONTRACTOR's participant, client, and/or patient records shall be maintained in a secure
7 manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish
8 and implement written record management procedures.

9 D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the
10 commencement of the contract, unless a longer period is required due to legal proceedings such as
11 litigations and/or settlement of claims.

12 E. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges,
13 billings, and revenues available at one (1) location within the limits of the County of Orange.

14 F. CONTRACTOR shall ensure all HIPAA (DRS) requirements are met. HIPAA requires that
15 clients, participants and/or patients be provided the right to access or receive a copy of their DRS and/or
16 request addendum to their records. Title 45 CFR §164.501, defines DRS as a group of records
17 maintained by or for a covered entity that is:

18 1. The medical records and billing records about individuals maintained by or for a covered
19 health care provider;

20 2. The enrollment, payment, claims adjudication, and case or medical management record
21 systems maintained by or for a health plan; or

22 3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

23 G. CONTRACTOR may retain client, and/or patient documentation electronically in accordance
24 with the terms of this Agreement and common business practices. If documentation is retained
25 electronically, CONTRACTOR shall, in the event of an audit or site visit:

26 1. Have documents readily available within forty-eight (48) hour notice of a scheduled audit
27 or site visit.

28 2. Provide auditor or other authorized individuals access to documents via a computer
29 terminal.

30 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if
31 requested.

32 H. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and
33 security of PII and/or PHI. CONTRACTOR shall notify COUNTY immediately by telephone call plus
34 email or fax upon the discovery of a Breach of unsecured PHI and/or PII.

35 I. CONTRACTOR may be required to pay any costs associated with a Breach of privacy and/or
36 security of PII and/or PHI, including but not limited to the costs of notification. CONTRACTOR shall
37 pay any and all such costs arising out of a Breach of privacy and/or security of PII and/or PHI.

1 J. CONTRACTOR shall retain all client and/or patient medical records for seven (7) years
2 following discharge of the client and/or patient, with the exception of non-emancipated minors for
3 whom records must be kept for at least one (1) year after such minors have reached the age of eighteen
4 (18) years, or for seven (7) years after the last date of service, whichever is longer.

5 6 **XXV. RESEARCH AND PUBLICATION**

7 CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out
8 of, or developed, as a result of this Agreement for the purpose of personal or professional research, or
9 for publication.

10 11 **XXVI. REVENUE**

12 A. CLIENT FEES – CONTRACTOR shall charge, unless waived by ADMINISTRATOR, a fee to
13 clients to whom billable services, other than those amounts reimbursed by Medicare, Medi-Cal or other
14 third party health plans, are provided pursuant to this Agreement, their estates and responsible relatives,
15 according to their ability to pay as determined by the State Department of Health Care Services’
16 “Uniform Method of Determining Ability to Pay” (UMDAP) procedure or by any other payment
17 procedure as approved in advance, and in writing by ADMINISTRATOR; and in accordance with Title
18 9 of the California Code of Regulations. Such fee shall not exceed the actual cost of services provided.
19 No client shall be denied services because of an inability to pay.

20 B. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all
21 available third-party reimbursement for which persons served pursuant to this Agreement may be
22 eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR’s usual and customary
23 charges.

24 C. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately
25 ensure proper billing and collection procedures. CONTRACTOR’s procedures shall specifically
26 provide for the identification of delinquent accounts and methods for pursuing such accounts.
27 CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current
28 status of fees which are billed, collected, transferred to a collection agency, or deemed by
29 CONTRACTOR to be uncollectible.

30 D. OTHER REVENUES – CONTRACTOR shall charge for services, supplies, or facility use by
31 persons other than individuals or groups eligible for services pursuant to this Agreement.

32 33 **XXVII. SEVERABILITY**

34 If a court of competent jurisdiction declares any provision of this Agreement or application thereof
35 to any person or circumstances to be invalid or if any provision of this Agreement contravenes any
36 federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or
37 //

1 the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain
2 in full force and effect, and to that extent the provisions of this Agreement are severable.

4 **XXVIII. SPECIAL PROVISIONS**

5 A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following
6 purposes:

- 7 1. Making cash payments to intended recipients of services through this Agreement.
- 8 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
9 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on
10 use of appropriated funds to influence certain federal contracting and financial transactions).
- 11 3. Fundraising.
- 12 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
13 CONTRACTOR's staff, volunteers, or members of the Board of Directors or governing body.
- 14 5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing
15 body for expenses or services.
- 16 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants,
17 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized
18 agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
- 19 7. Paying an individual salary or compensation for services at a rate in excess of the current
20 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary
21 Schedule may be found at www.opm.gov.
- 22 8. Severance pay for separating employees.
- 23 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building
24 codes and obtaining all necessary building permits for any associated construction.
- 25 10. Supplanting current funding for existing services.

26 B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR
27 shall not use the funds provided by means of this Agreement for the following purposes:

- 28 1. Funding travel or training (excluding mileage or parking).
- 29 2. Making phone calls outside of the local area unless documented to be directly for the
30 purpose of client care.
- 31 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 32 4. Purchase of artwork or other items that are for decorative purposes and do not directly
33 contribute to the quality of services to be provided pursuant to this Agreement.
- 34 5. Purchasing or improving land, including constructing or permanently improving any
35 building or facility, except for tenant improvements.
- 36 6. Providing inpatient hospital services or purchasing major medical equipment.

37 //

1 7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal
2 funds (matching).

3 8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
4 CONTRACTOR's clients.

5
6 **XXIX. STATUS OF CONTRACTOR**

7 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be
8 wholly responsible for the manner in which it performs the services required of it by the terms of this
9 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and
10 consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the
11 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR
12 or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR
13 assumes exclusively the responsibility for the acts of its employees, agents, consultants, or
14 subcontractors as they relate to the services to be provided during the course and scope of their
15 employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be
16 entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner
17 to be COUNTY's employees.

18
19 **XXX. TERM**

20 A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions
21 of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified
22 in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided
23 in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as
24 would normally extend beyond this term, including but not limited to, obligations with respect to
25 confidentiality, indemnification, audits, reporting and accounting.

26 B. Any administrative duty or obligation to be performed pursuant to this Agreement on a
27 weekend or holiday may be performed on the next regular business day.

28
29 **XXXI. TERMINATION**

30 A. Either party may terminate this Agreement, without cause, upon thirty (30) calendar days'
31 written notice given the other party.

32 B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement upon
33 five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this
34 Agreement. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty
35 (30) calendar days for corrective action.

36 C. COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence
37 of any of the following events:

- 1 1. The loss by CONTRACTOR of legal capacity.
- 2 2. Cessation of services.
- 3 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
- 4 another entity without the prior written consent of COUNTY.
- 5 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
- 6 required pursuant to this Agreement.
- 7 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
- 8 this Agreement.
- 9 6. The continued incapacity of any physician or licensed person to perform duties required
- 10 pursuant to this Agreement.
- 11 7. Unethical conduct or malpractice by any physician or licensed person providing services
- 12 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR
- 13 removes such physician or licensed person from serving persons treated or assisted pursuant to this
- 14 Agreement.

15 D. CONTINGENT FUNDING

- 16 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
 - 17 a. The continued availability of federal, state and county funds for reimbursement of
 - 18 COUNTY's expenditures, and
 - 19 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
 - 20 approved by the Board of Supervisors.
- 21 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,
- 22 terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given
- 23 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated
- 24 funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

25 E. In the event this Agreement is suspended or terminated prior to the completion of the term as
26 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole
27 discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced
28 term of the Agreement.

29 F. In the event this Agreement is terminated by either party pursuant to Subparagraphs B., C. or D.
30 above, CONTRACTOR shall do the following:

- 31 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
- 32 is consistent with recognized standards of quality care and prudent business practice.
- 33 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
- 34 performance during the remaining contract term.
- 35 3. Until the date of termination, continue to provide the same level of service required by this
- 36 Agreement.

37 //

1 4. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR,
2 upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an
3 orderly transfer.

4 5. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with
5 client's best interests.

6 6. If records are to be transferred to COUNTY, pack and label such records in accordance
7 with directions provided by ADMINISTRATOR.

8 7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and
9 supplies purchased with funds provided by COUNTY.

10 8. To the extent services are terminated, cancel outstanding commitments covering the
11 procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding
12 commitments which relate to personal services. With respect to these canceled commitments,
13 CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims
14 arising out of such cancellation of commitment which shall be subject to written approval of
15 ADMINISTRATOR.

16 9. Provide written notice of termination of services to each client being served under this
17 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
18 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendar
19 day period.

20 G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
21 exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

22
23 **XXXII. THIRD PARTY BENEFICIARY**

24 Neither party hereto intends that this Agreement shall create rights hereunder in third parties
25 including, but not limited to, any subcontractors or any clients provided services pursuant to this
26 Agreement.

27
28 **XXXIII. WAIVER OF DEFAULT OR BREACH**

29 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
30 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
31 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
32 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
33 Agreement.

34 //
35 //
36 //
37 //

1 IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange,
2 State of California.

3
4 EXTENDED CARE HOSPITAL OF WESTMINSTER

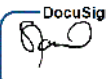
5
6 BY:  _____ DATED: 4/25/2019
7 DocuSigned by:
George Rodes
EF4F68A846504AB...
8
9 TITLE: Chief Financial Officer

10
11 BY: _____ DATED: _____
12
13
14 TITLE: _____
15

16
17 COUNTY OF ORANGE

18
19 BY: _____ DATED: _____
20
21 HEALTH CARE AGENCY

22
23
24
25 APPROVED AS TO FORM
26 OFFICE OF THE COUNTY COUNSEL
27 ORANGE COUNTY, CALIFORNIA

28
29 BY:  _____ DATED: 4/25/2019
30 DocuSigned by:
79055CA571A94F8...
31

32
33
34 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
36 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
37 or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her
signature alone is required by ADMINISTRATOR.

1 EXHIBIT A
 2 TO AGREEMENT FOR PROVISION OF
 3 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH
 4 SPECIAL TREATMENT PROGRAM SERVICES
 5 BETWEEN
 6 COUNTY OF ORANGE
 7 AND
 8 EXTENDED CARE HOSPITAL OF WESTMINSTER
 9 JULY 1, 2019 THROUGH JUNE 30, 2020

10
11 **I. COMMON TERMS AND DEFINITIONS**

12 The parties agree to the following terms and definitions, and to those terms and definitions which
13 for convenience are set forth elsewhere in the Agreement.

14 A. Client means an individual, referred by COUNTY or enrolled in CONTRACTOR’s program for
15 services under the Agreement, who is dealing with a chronic mental illness.

16 B. NPI means National Provider Identifier and refers to the standard unique health identifier that
17 was adopted by the Secretary of Health and Human Services under HIPAA. All HIPAA covered
18 healthcare providers, individuals and organizations must obtain a NPI for use to identify themselves in
19 HIPAA standard transactions. The NPI is assigned for life.

20 C. NPP means a document that notifies individuals of uses and disclosures of PHI that may be
21 made by or on behalf of the health plan or health care provider as set forth in HIPAA.

22 D. PHI means Protected Health Information and refers to individually identifiable health
23 information usually transmitted by electronic media, maintained in any medium as defined in the
24 regulations, or for an entity such as a health plan, transmitted or maintained in any other medium. It is
25 created or received by a covered entity and relates to the past, present, or future physical or mental
26 health or condition of an individual, provision of health care to an individual, or the past, present, or
27 future payment for health care provided to an individual.

28 E. Rehabilitative Focus means the central point upon which activity is directed to restore a
29 condition of good health, the ability to work, and the ability to perform daily living skills.

30 F. SNF-STP means Skilled Nursing Facility – Special Treatment Program and refers to refers to
31 programs that serve Clients who have a chronic psychiatric impairment and whose adaptive functioning
32 is moderately impaired.

33 G. Therapeutic Community Model means a drug-free environment in which persons with addictive
34 and other mental health problems live together in an organized and structured manner that will promote
35 change and a possible return to life within society.

36 H. Therapeutic Milieu means an environment that promotes the healing of disease.

37 //

1 I. UOS means unit of Service and refers to one (1) calendar day during which CONTRACTOR
 2 provides all of the SNF-STP described hereunder, which day shall begin at twelve o'clock midnight.
 3 The number of billable UOS shall include the day of admission and exclude the day of discharge unless
 4 admission and discharge occur on the same day.

6 II. BUDGET

7 The following budget is set forth for informational purposes only and may be adjusted by mutual
 8 written agreement of CONTRACTOR and ADMINISTRATOR. CONTRACTOR and
 9 ADMINISTRATOR may mutually agree, in writing to modify the Budget Paragraph of this Exhibit A to
 10 the Agreement.

	PERIOD ONE	TOTAL
PROGRAM COSTS		
Westminster	\$ 2,621,513	\$ 2,621,513
West Anaheim	<u>1,797,616</u>	<u>1,797,616</u>
TOTAL PROGRAM COSTS	\$ 4,419,129	\$ 4,419,129
REVENUE		
Projected Medi-Cal Revenue	\$ 7,206,310	\$ 7,206,310
Prior Years Excess Revenue	<u>217,078</u>	<u>217,078</u>
TOTAL REVENUE	\$ 11,842,517	\$ 11,842,517
TOTAL MAXIMUM OBLIGATION	\$ 4,419,129	\$ 4,419,129

26 III. ISSUE RESOLUTION

27 A. For resolution of issues between CONTRACTOR and COUNTY with respect to the
 28 implementation and operation of the Agreement or ADMINISTRATOR's policies and procedures
 29 regarding services described herein, the following sequential steps shall apply:

30 1. CONTRACTOR shall routinely utilize all informal communication processes and methods
 31 with ADMINSTRATOR including, but not limited to, telephone contact, facsimile machine (FAX), e-
 32 mail, written correspondence and meetings, to resolve any issues or problems regarding the
 33 implementation and operation of the Agreement or ADMINISTRATOR's policies and procedures
 34 regarding services described herein.

35 2. If the parties are unable to resolve an issue(s), CONTRACTOR shall give written notice to
 36 ADMINISTRATOR setting forth in specific terms the existence and nature of any unresolved matter or
 37 concern related to the obligations under the Agreement. ADMINISTRATOR shall have fifteen (15)

1 calendar days following such notice to resolve of any issue(s) identified in this manner. However, by
2 mutual consent this period of time may be extended to thirty (30) calendar days.

3 3. If the parties are unable to resolve the issue, they shall submit a joint written statement
4 describing the facts of the issue, within thirty (30) calendar days after the written notice described above
5 to COUNTY's Director of Behavioral Health Services for final resolution.

6 4. The rights and remedies provided by this paragraph are in addition to those provided by law
7 to either party.

8 B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Issue
9 Resolution Paragraph of this Exhibit A to the Agreement.

10 **IV. PATIENT'S RIGHTS**

11 A. CONTRACTOR shall post the current DHCS Patients' Rights poster as well as
12 ADMINISTRATOR's MHP Complaint and Grievance poster in locations readily available to Clients and
13 staff and have complaint forms and complaint envelopes readily accessible to Clients.

14 B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have
15 complaint resolution and grievance processes approved by ADMINISTRATOR, to which the Client
16 shall have access.

17 1. CONTRACTOR's complaint resolution processes shall emphasize informal, easily
18 understood steps designed to resolve disputes as quickly and simply as possible.

19 2. CONTRACTOR's complaint resolution and grievance processes shall incorporate
20 ADMINISTRATOR's grievance, patients' rights, and utilization management guidelines and procedures.

21 C. Complaint Resolution and Grievance Process - ADMINISTRATOR shall implement complaint
22 and grievance procedures that shall include the following components:

23 1. Complaint Resolution. This process will specifically address and attempt to resolve Client
24 complaints and concerns at CONTRACTOR's facility. Examples of such complaints may include
25 dissatisfaction with services or with the quality of care, or dissatisfaction with the condition of the
26 physical plant.

27 2. Formal Grievance. When the Client's complaint is not resolved at CONTRACTOR's
28 facility and the Client or Client representative requests it, the complaint becomes a formal grievance.
29 The request is made to COUNTY MHIS and represents the first step in the formal grievance process.

30 3. Title IX Rights Advocacy. This process may be initiated by a Client who registers a
31 statutory rights violation or a denial or abuse complaint with the COUNTY Patients' Rights Office. The
32 Patients' Rights office shall investigate the complaint, and Title IX grievance procedures shall apply,
33 which involve the COUNTY's Director of Behavioral Health Services and the State's Patients' Rights
34 Office.

35 D. The parties agree that Clients have recourse to initiate a complaint to CONTRACTOR, appeal
36 to the COUNTY Patients' Rights Office, file a formal grievance, and file a Title IX complaint. The
37

1 patients' advocate shall advise and assist the Clients, investigate the cause of the complaint or grievance,
2 and attempt to resolve the matter.

3 E. No provision of the Agreement shall be construed as replacing or conflicting with the duties of
4 COUNTY Patients' Rights Office pursuant to WIC Section 5500.

5 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
6 Patient's Rights Paragraph of this Exhibit A to the Agreement.

7 8 **V. PAYMENTS**

9 A. For provision of the services described herein, COUNTY shall pay CONTRACTOR in
10 advance, for each month during which CONTRACTOR provides the services herein, at the following
11 rates, provided such payments do not exceed COUNTY's Maximum Obligation specified in the
12 Referenced Contract Provisions of the Agreement:

13 1. Period One: three hundred sixty-eight thousand two hundred sixty dollars (\$368,260) per
14 month for the period July 1, 2019 through June 30, 2020.

15 B. If the Agreement terminates at a time other than at the end of a full calendar month, COUNTY
16 shall continue to pay CONTRACTOR in the manner specified in this Payments Paragraph at the
17 following rates per day for any portion of a month during which services are provided.

	Westminster	West Anaheim	
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
	1. Period One	\$5,701	\$4,969

22 C. CONTRACTOR's invoices shall be on a form approved or supplied by ADMINISTRATOR and
23 provide such information as is required by ADMINISTRATOR. CONTRACTOR shall submit a
24 monthly invoice no earlier than the 20th day of the month prior to the month for which services are
25 billed. Payments should be made by COUNTY approximately twenty-one (21) days after receipt of a
26 correctly completed invoice. Failure to comply with any of the provisions of the Agreement may result
27 in ADMINISTRATOR delaying or withholding any payment to CONTRACTOR.

28 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
29 Payments Paragraph of this Exhibit A to the Agreement.

30 31 **VI. REPORTS**

32 **A. PROGRAMMATIC**

33 1. CONTRACTOR shall submit to ADMINISTRATOR written quarterly reports on staff
34 vacancies, recruitments, and nursing staff-per-patient ratio. These reports must be on a form acceptable
35 to ADMINISTRATOR and shall be submitted to ADMINISTRATOR the 20th day of the month
36 following the end of the quarter and should include the following information for each vacant position:

37 a. Date the position became vacant;

- 1 b. Total number of consecutive scheduled working days the position was vacant;
- 2 c. Number of consecutive scheduled working days the position was vacant during the
- 3 monthly billing period;
- 4 d. Monthly position salary plus benefits.
- 5 2. CONTRACTOR shall submit quarterly performance outcomes as specified in the
- 6 Responsibilities Paragraph of Exhibit A to the Agreement.
- 7 B. FINANCIAL - CONTRACTOR shall submit monthly expenditure and revenue reports on or
- 8 before the 20th day of the month following the end of the month being reported.
- 9 C. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports as required by the
- 10 ADMINISTRATOR concerning CONTRACTOR's activities as they affect the contract duties and
- 11 purposes contained herein. In no event, however, may the ADMINISTRATOR require such reports
- 12 without at least thirty (30) days prior notification thereof. ADMINISTRATOR shall explain procedures
- 13 for reporting the required information.
- 14 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
- 15 Reports of this Exhibit A to the Agreement.

VII. SERVICES

A. FACILITIES

Services shall be provided in secure facilities located at:

206 Hospital Circle
Westminster, CA 92683

645 South Beach Blvd.
Anaheim, CA 92804

1. WESTMINSTER FACILITY

a. CONTRACTOR shall provide for exclusive use by COUNTY, a separate forty-six (46) bed licensed Client care area which shall consist of the TRC section of the main and a separate building which shall be used for Client activities and staff offices to maintain the capability of providing services hereunder to forty-six (46) adults, and a separate storage and an office area, known as the Annex building.

b. CONTRACTOR shall provide the following additional space:

- 1) Patio areas.
- 2) A shared dining area for ambulatory mental health Clients.
- 3) A shared outside area in the Annex building for ambulatory mental health Clients.
- 4) Storage areas.

2. WEST ANAHEIM FACILITY

a. CONTRACTOR shall provide for exclusive use by COUNTY, a separate fifty-one (51) bed licensed Client care area which shall consist of the TRC section of the main building to maintain the capability of providing services hereunder to fifty-one (51) adults.

b. CONTRACTOR shall make available to COUNTY the following additional space:

1) Patio areas.

2) A dining area for ambulatory mental health Clients located outside of the areas described above.

3) Storage areas.

B. PERSONS TO BE SERVED

1. CONTRACTOR shall provide services to adults, ages eighteen (18) and older, pursuant to Services Paragraph of this Exhibit A to the Agreement, who are referred for admission by ADMINISTRATOR.

2. CONTRACTOR shall admit Clients referred by ADMINISTRATOR who meet ADMINISTRATOR’s criteria for therapeutic residential center services and who also meet the admission criteria approved by DHCS and the “Admission of Patient’s” guidelines under Title 22, Sections 72515 (a)-(b).

3. CONTRACTOR shall not refuse admission of Clients if they meet all of the admission criteria identified above.

4. CONTRACTOR shall accept for re-admission those Clients transferred from their facility for acute medical or psychiatric stabilization unless an alternative placement plan is indicated and agreed upon by ADMINISTRATOR.

5. CONTRACTOR shall provide services in a non-discriminatory manner and ensure that equal access is provided to all beneficiaries representative of the COUNTY’s population.

6. CONTRACTOR shall make no distinction as to voluntary or involuntary status of Clients for the provision of these services. Characteristics of this target population shall include, but may not be limited to:

a. History of problem behaviors that currently exclude Clients from acceptance and/or manageability at a less restrictive level of care such as board and care facilities, including individuals with dual diagnosis of substance abuse and mental illness which may complicate Client compliance with psychiatric treatment.

b. Resistance to medication treatment, non-compliance with medications, and resistance to treatment programming.

c. Poor self-care and social skills to a degree which currently precludes their functioning in more independent settings. Most Clients will be considered gravely disabled, and on involuntary status as a Lanterman Petris Short (LPS) conservatee.

d. Special cultural and language needs that prevent adequate treatment in traditional treatment settings.

C. SERVICES

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1 1. CONTRACTOR provided space shall be utilized for a long-term treatment program based
2 on a therapeutic milieu with a rehabilitative focus and a behavioral modification program, to treat the
3 severe and persistent mental health symptoms of COUNTY Clients.

4 a. The treatment program shall follow a therapeutic community model; and shall
5 emphasize the development of skills for self-care, development of behavior for re-entry into a lower
6 level of care, and placement to a less restrictive level of care.

7 b. The overall goal of this program shall be to increase the functional levels of Clients,
8 enabling them to transition to less restrictive levels of intervention, including independent living.

9 2. For Clients receiving SNF-STP services pursuant to the Agreement and as required by Title
10 22, Sections 72443 through 72457, of the CCR, which shall include therapeutic services, including
11 prevocational preparation and discharge planning, provided to mentally disordered persons having
12 special needs in one or more of the following general areas: self-help skills, behavior adjustment, and
13 interpersonal relationships. CONTRACTOR shall provide or arrange for:

14 a. History and physical examination of each Client within seventy-two (72) hours of
15 admission;

16 b. Psychiatric history, current DSM diagnosis and evaluation;

17 c. Diagnostic information for treatment authorization request;

18 d. Individual treatment plan;

19 e. Medication orders;

20 f. Psychiatric and psychological services compatible with individual treatment plans;

21 g. Facilitation in accessing Client health plans, primary care physicians, CalOptima, et al;

22 h. Discharge planning and continuing care services;

23 i. Clinical and neurological laboratory services;

24 j. Radiology services;

25 k. Pharmaceutical services;

26 l. Financial evaluation of each Client;

27 m. Determination of each Client's Medi-Cal eligibility;

28 n. Collection of fees and private insurance revenue;

29 o. Compliance with all rules and regulations of DHCS regarding the care and treatment of
30 Clients admitted under the program, pursuant to the Agreement, and to the extent not inconsistent with
31 COUNTY rules and regulations;

32 p. Monitoring of the condition of each Client receiving services pursuant to the
33 Agreement, and assessment of the appropriateness of Client's continued placement in the
34 CONTRACTOR's facility; and

35 q. Documentation of evaluations, treatment, and care provided to each Client and
36 provision of on-going assessment of the status of each Client receiving services pursuant to the
37 Agreement.

1 3. CONTRACTOR shall offer psychiatric rehabilitative services which emphasize
2 amelioration or stabilization of those impairments of a mental disorder which prevent the Client from
3 successfully functioning in a less restrictive setting. The program elements shall include:

4 a. Individualized psychiatric medication regimen tailored to the Client’s history of poor
5 medication response, designed with a goal of maximum psychiatric symptom reduction, so that the
6 Client can participate in other rehabilitative services.

7 b. Individualized programming based on specific Client needs identified through an
8 interdisciplinary Client assessment.

9 c. Treatment modalities which focus on rehabilitative efforts such as personal care and
10 social skills training, pre-vocational and educational opportunities, self-awareness and self-help
11 strategies for coping with the symptoms of a Client's mental illness, recreational therapy and activities,
12 and medication management.

13 d. Provision of a therapeutic milieu which utilizes a multi-disciplinary approach to care
14 inclusive of psychiatric services with both treatment groups and individual behavioral interventions,
15 targeted to achieve treatment goals. Whenever possible, Client families and/or significant others will be
16 involved in treatment activities.

17 e. Twenty-seven (27) hours of therapeutic activities shall be provided for each Client per
18 week, including behavioral contingencies designed to encourage the individual Client's participation at
19 progressively higher levels. Flexibility within innovative programs may be approved on a case-by-case
20 basis.

21 4. CONTRACTOR shall develop and maintain a continuous quality improvement process,
22 including the formation of a quality improvement committee, the overall goal of which is the
23 maintenance of high quality Client care and effective utilization of services offered. This process will
24 address utilization management, peer case review, chart review, supervisory review and medication
25 monitoring.

26 5. CONTRACTOR shall provide services pursuant to the Agreement in a manner that is
27 culturally and linguistically appropriate for the population served. CONTRACTOR shall maintain
28 documentation of such efforts which may include, but not be limited to:

29 a. Records of participation of COUNTY sponsored or other applicable training;

30 b. Recruitment and hiring policies and procedures;

31 c. Copies of literature in multiple languages and formats, as appropriate; and

32 d. Descriptions of measures taken to enhance accessibility for, and sensitivity to, persons
33 who are physically challenged.

34 6. CONTRACTOR shall meet the requirements set forth in Title 22 of the CCR to be certified
35 to provide a STP.

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1 7. CONTRACTOR shall provide those services required by Title 22 of the CCR and Federal
2 laws establishing standards for participation in the Medi-Cal Program, as they exist now or may be
3 hereafter amended or changed, and shall as a minimum include the following:

4 a. Direct Services

5 1) Room and dietetic services;
6 2) Nursing services, including drug administration and Client care; and
7 3) Client activity program, including arranging for Client transportation for activities
8 outside of facility.

9 b. Support Services

10 1) Housekeeping;
11 2) Laundry;
12 3) Maintenance;
13 4) Medical records;
14 5) Drug order processing;
15 7) Provision for emergency medical and ancillary services; and
16 8) Arrange for transportation to and from medical appointments.

17 8. COUNTY shall pay for ambulance or medical van transportation to another mental health
18 facility in accordance with COUNTY's Medical Transportation Contract. CONTRACTOR shall
19 provide an accompanying escort with Client if a return trip is intended.

20 9. For each full-scope Medi-Cal beneficiary under twenty-one (21) years of age admitted,
21 CONTRACTOR shall give the beneficiary/guardian/conservator the DHCS notification materials
22 entitled, EPSDT, and TBS. CONTRACTOR shall document in the beneficiary's medical record that
23 these materials were provided.

24 D. UOS shall be one (1) calendar day during which services are provided under the Agreement to a
25 Client. The day of admission is included; the day of discharge is excluded. If both admission and
26 discharge occur on the same day, the day is considered a day of admission and counts as a full day.
27 UOS under the Agreement totals forty-six (46) beds per day at the Westminster TRC for a total of
28 sixteen thousand seven hundred ninety (16,790) annually, and fifty-one (51) beds per day at West
29 Anaheim TRC for a total of seventeen thousand three hundred twenty-four (17,324) annually.

30 E. PERFORMANCE OUTCOMES

31 1. For each quarter, CONTRACTOR shall submit requested information to
32 ADMINISTRATOR, and shall include information provided for the purpose of establishing a baseline
33 to compare against Period One; this will be used to measure future performance outcomes and will
34 include:

35 a. The total number of Clients discharged to a less restrictive level of care;

36 2. CONTRACTOR shall cooperate with ADMINISTRATOR in meeting quality improvement
37 and utilization review standards.

1 3. Contractor shall provide assistance to ADMINISTRATOR in conducting its utilization and
2 reporting functions, and medical necessity determination.

3 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
4 Services Paragraph of this Exhibit A to the Agreement.

6 **VIII. STAFFING**

7 A. CONTRACTOR shall provide the following clinical staffing, expressed in FTEs, which shall be
8 equal to an average of forty (40) hours per week, and is required to maintain this at all times for the
9 provision of services hereunder:

11	WESTMINSTER TRC	FTEs
12	Director of Nursing	1.00
13	Registered Nurse	1.00
14	Licensed Vocational Nurse	7.00
15	Certified Nursing Assistant	17.40
16	O.T. Activity Assistant	2.00
17	Ward Clerk	1.00
18	Program Director	1.00
19	Social Worker	1.00
20	Mental Health Worker/MH Spec	10.00
21	Mental Health Worker/Peer Mentor	.50
22	Clerk/Typist	1.00
23	Subcontractor	<u>.90</u>
24	TOTAL FTEs	43.80

26	WEST ANAHEIM TRC	FTEs
27	Director of Nursing	1.00
28	Licensed Vocational Nurse	9.50
29	Certified Nursing Assistant	18.00
30	O.T. Activity Assistant	2.00
31	Ward Clerk	1.50
32	Program Director	1.00
33	Social Worker	1.00
34	Mental Health Worker/MH Spec	7.00
35	Mental Health Worker/Peer Mentor	.50
36	Subcontractor	<u>.90</u>
37	TOTAL FTEs	42.40

1 B. CONTRACTOR shall provide appropriate administrative and clerical staff to support the
2 staffing and services provided under the Agreement.

3 C. CONTRACTOR shall include bilingual/bicultural services to meet the needs of threshold
4 languages as determined by COUNTY. Whenever possible, bilingual/bicultural therapists should be
5 retained. Any clinical vacancies occurring at a time when bilingual and bicultural composition of the
6 clinical staffing does not meet the above requirement must be filled with bilingual and bicultural staff
7 unless ADMINISTRATOR consents, in writing, to the filling of those positions with non-bilingual staff.

8 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
9 Staffing Paragraph of this Exhibit A to the Agreement.

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1 EXHIBIT B
2 AGREEMENT FOR PROVISION OF
3 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH
4 SPECIAL TREATMENT PROGRAM SERVICES
5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 EXTENDED CARE HOSPITAL OF WESTMINSTER
9 JULY 1, 2019 THROUGH JUNE 30, 2020

10
11 **I. BUSINESS ASSOCIATE CONTRACT**

12 A. GENERAL PROVISIONS AND RECITALS

13 1. The parties agree that the terms used, but not otherwise defined in the Common Terms and
14 Definitions Paragraph of Exhibit A, B, and C to the Agreement or in subparagraph B below, shall have
15 the same meaning given to such terms under HIPAA, the HITECH Act, and their implementing
16 regulations at 45 CFR Parts 160 and 164 HIPAA regulations as they may exist now or be hereafter
17 amended.

18 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act,
19 and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that
20 CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of
21 COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of
22 "Business Associate" in 45 CFR § 160.103.

23 3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the
24 terms of the Agreement, some of which may constitute PHI, as defined below in Subparagraph B.10, to
25 be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the
26 Agreement.

27 4. The parties intend to protect the privacy and provide for the security of PHI that may be
28 created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance
29 with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH
30 Act, and the HIPAA regulations as they may exist now or be hereafter amended.

31 5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA
32 regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by
33 other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

34 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
35 Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the
36 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
37 terms of this Business Associate Contract and the applicable standards, implementation specifications,

1 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,
2 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
3 pursuant to the Agreement.

4 B. DEFINITIONS

5 1. "Administrative Safeguards" are administrative actions, and policies and procedures, to
6 manage the selection, development, implementation, and maintenance of security measures to protect
7 electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection
8 of that information.

9 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted
10 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

11 a. Breach excludes:

12 1) Any unintentional acquisition, access, or use of PHI by a workforce member or
13 person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use
14 was made in good faith and within the scope of authority and does not result in further use or disclosure
15 in a manner not permitted under the Privacy Rule.

16 2) Any inadvertent disclosure by a person who is authorized to access PHI at
17 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
18 care arrangement in which COUNTY participates, and the information received as a result of such
19 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

20 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
21 that an unauthorized person to whom the disclosure was made would not reasonably have been able to
22 retain such information.

23 b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
24 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
25 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
26 based on a risk assessment of at least the following factors:

27 1) The nature and extent of the PHI involved, including the types of identifiers and the
28 likelihood of re-identification;

29 2) The unauthorized person who used the PHI or to whom the disclosure was made;

30 3) Whether the PHI was actually acquired or viewed; and

31 4) The extent to which the risk to the PHI has been mitigated.

32 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy
33 Rule in 45 CFR § 164.501.

34 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in
35 45 CFR § 164.501.

36 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in
37 45 CFR § 160.103.

1 6. "Health Care Operations" shall have the meaning given to such term under the HIPAA
2 Privacy Rule in 45 CFR § 164.501.

3 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in
4 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
5 with 45 CFR § 164.502(g).

6 8. "Physical Safeguards" are physical measures, policies, and procedures to protect
7 CONTRACTOR's electronic information systems and related buildings and equipment, from natural
8 and environmental hazards, and unauthorized intrusion.

9 9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually
10 Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

11 10. "PHI" shall have the meaning given to such term under the HIPAA regulations in
12 45 CFR § 160.103.

13 11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy
14 Rule in 45 CFR § 164.103.

15 12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or
16 his or her designee.

17 13. "Security Incident" means attempted or successful unauthorized access, use, disclosure,
18 modification, or destruction of information or interference with system operations in an information
19 system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans,
20 "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by
21 CONTRACTOR.

22 14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of
23 electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

24 15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in
25 45 CFR § 160.103.

26 16. "Technical safeguards" means the technology and the policy and procedures for its use that
27 protect electronic PHI and control access to it.

28 17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable,
29 unreadable, or indecipherable to unauthorized individuals through the use of a technology or
30 methodology specified by the Secretary of Health and Human Services in the guidance issued on the
31 HHS Web site.

32 18. "Use" shall have the meaning given to such term under the HIPAA regulations in
33 45 CFR § 160.103.

34 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

35 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to
36 CONTRACTOR other than as permitted or required by this Business Associate Contract or as required
37 by law.

1 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business
2 Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to
3 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
4 other than as provided for by this Business Associate Contract.

5 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR
6 Part 164 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
7 creates, receives, maintains, or transmits on behalf of COUNTY.

8 4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is
9 known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the
10 requirements of this Business Associate Contract.

11 5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI
12 not provided for by this Business Associate Contract of which CONTRACTOR becomes aware.
13 CONTRACTOR must report Breaches of Unsecured PHI in accordance with subparagraph E below and
14 as required by 45 CFR § 164.410.

15 6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or
16 transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply
17 through this Business Associate Contract to CONTRACTOR with respect to such information.

18 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
19 written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an
20 Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an
21 EHR with PHI, and an individual requests a copy of such information in an electronic format,
22 CONTRACTOR shall provide such information in an electronic format.

23 8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs
24 or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty
25 (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY
26 in writing no later than ten (10) calendar days after said amendment is completed.

27 9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps,
28 relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on
29 behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by
30 COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's
31 compliance with the HIPAA Privacy Rule.

32 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
33 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
34 and to make information related to such Disclosures available as would be required for COUNTY to
35 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with
36 45 CFR § 164.528.

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1 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
2 a time and manner to be determined by COUNTY, that information collected in accordance with the
3 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
4 Disclosures of PHI in accordance with 45 CFR § 164.528.

5 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's
6 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the
7 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

8 13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by
9 a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all
10 employees, subcontractors, and agents who have access to the Social Security data, including
11 employees, agents, subcontractors, and agents of its subcontractors.

12 14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a
13 criminal proceeding for a violation of HIPAA. COUNTY may terminate the Agreement, if
14 CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may
15 terminate the Agreement, if a finding or stipulation that CONTRACTOR has violated any standard or
16 requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made
17 in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined.
18 COUNTY will consider the nature and seriousness of the violation in deciding whether or not to
19 terminate the Agreement.

20 15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting
21 CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at
22 no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative
23 proceedings being commenced against COUNTY, its directors, officers or employees based upon
24 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,
25 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its
26 subcontractor, employee, or agent is a named adverse party.

27 16. The Parties acknowledge that federal and state laws relating to electronic data security and
28 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to
29 provide for procedures to ensure compliance with such developments. The Parties specifically agree to
30 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH
31 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon
32 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY
33 concerning an amendment to this Business Associate Contract embodying written assurances consistent
34 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other
35 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the
36 event:

37 //

1 a. CONTRACTOR does not promptly enter into negotiations to amend this Business
2 Associate Contract when requested by COUNTY pursuant to this subparagraph C; or

3 b. CONTRACTOR does not enter into an amendment providing assurances regarding the
4 safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of
5 HIPAA, the HITECH Act, and the HIPAA regulations.

6 17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
7 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
8 B.2.a above.

9 D. SECURITY RULE

10 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish
11 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with
12 45 CFR § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to
13 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
14 CONTRACTOR shall develop and maintain a written information privacy and security program that
15 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of
16 CONTRACTOR's operations and the nature and scope of its activities.

17 2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to
18 comply with the standards, implementation specifications and other requirements of 45 CFR Part 164,
19 Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its
20 current and updated policies upon request.

21 3. CONTRACTOR shall ensure the continuous security of all computerized data systems
22 containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
23 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents
24 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
25 maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

26 a. Complying with all of the data system security precautions listed under subparagraphs
27 E, below;

28 b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in
29 conducting operations on behalf of COUNTY;

30 c. Providing a level and scope of security that is at least comparable to the level and scope
31 of security established by the OMB in OMB Circular No. A-130, Appendix III - Security of Federal
32 Automated Information Systems, which sets forth guidelines for automated information systems in
33 Federal agencies;

34 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
35 transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same
36 restrictions and requirements contained in this subparagraph D of this Business Associate Contract.

37 //

1 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it
2 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with
3 subparagraph E below and as required by 45 CFR § 164.410.

4 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who
5 shall be responsible for carrying out the requirements of this paragraph and for communicating on
6 security matters with COUNTY.

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

9 a. Employee Training. All workforce members who assist in the performance of
10 functions or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI
11 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
12 behalf of COUNTY, must complete information privacy and security training, at least annually, at
13 CONTRACTOR's expense. Each workforce member who receives information privacy and security
14 training must sign a certification, indicating the member's name and the date on which the training was
15 completed. These certifications must be retained for a period of six (6) years following the termination
16 of Agreement.

17 b. Employee Discipline. Appropriate sanctions must be applied against workforce
18 members who fail to comply with any provisions of CONTRACTOR's privacy P&Ps, including
19 termination of employment where appropriate.

20 c. Confidentiality Statement. All persons that will be working with PHI COUNTY
21 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
22 COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and
23 Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the
24 workforce member prior to access to such PHI. The statement must be renewed annually. The
25 CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection
26 for a period of six (6) years following the termination of the Agreement.

27 d. Background Check. Before a member of the workforce may access PHI COUNTY
28 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
29 COUNTY, a background screening of that worker must be conducted. The screening should be
30 commensurate with the risk and magnitude of harm the employee could cause, with more thorough
31 screening being done for those employees who are authorized to bypass significant technical and
32 operational security controls. The CONTRACTOR shall retain each workforce member's background
33 check documentation for a period of three (3) years.

34 2. Technical Security Controls

35 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
36 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
37 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which

1 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
2 COUNTY.

3 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
4 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
5 must have sufficient administrative, physical, and technical controls in place to protect that data, based
6 upon a risk assessment/system security review.

7 c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses
8 to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
9 required to perform necessary business functions may be copied, downloaded, or exported.

10 d. Removable media devices. All electronic files that contain PHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
12 must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,
13 floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified
14 algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered “removed from the
15 premises” if it is only being transported from one of CONTRACTOR’s locations to another of
16 CONTRACTOR’s locations.

17 e. Antivirus software. All workstations, laptops and other systems that process and/or
18 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
19 transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software
20 solution with automatic updates scheduled at least daily.

21 f. Patch Management. All workstations, laptops and other systems that process and/or
22 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
23 transmits on behalf of COUNTY must have critical security patches applied, with system reboot if
24 necessary. There must be a documented patch management process which determines installation
25 timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable
26 patches must be installed within thirty (30) calendar or business days of vendor release. Applications
27 and systems that cannot be patched due to operational reasons must have compensatory controls
28 implemented to minimize risk, where possible.

29 g. User IDs and Password Controls. All users must be issued a unique user name for
30 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
31 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
32 changed upon the transfer or termination of an employee with knowledge of the password, at maximum
33 within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight
34 characters and must be a non-dictionary word. Passwords must not be stored in readable format on the
35 computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days.
36 Passwords must be changed if revealed or compromised. Passwords must be composed of characters
37 from at least three (3) of the following four (4) groups from the standard keyboard:

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)
- 3) Arabic numerals (0-9)
- 4) Non-alphanumeric characters (punctuation symbols)

h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or DoD 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission by COUNTY.

i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.

j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.

m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,

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1 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
2 comprehensive intrusion detection and prevention solution.

3 3. Audit Controls

4 a. System Security Review. CONTRACTOR must ensure audit control mechanisms that
5 record and examine system activity are in place. All systems processing and/or storing PHI COUNTY
6 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
7 COUNTY must have at least an annual system risk assessment/security review which provides
8 assurance that administrative, physical, and technical controls are functioning effectively and providing
9 adequate levels of protection. Reviews should include vulnerability scanning tools.

10 b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
12 must have a routine procedure in place to review system logs for unauthorized access.

13 c. Change Control. All systems processing and/or storing PHI COUNTY discloses to
14 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
15 must have a documented change control procedure that ensures separation of duties and protects the
16 confidentiality, integrity and availability of data.

17 4. Business Continuity/Disaster Recovery Control

18 a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan
19 to enable continuation of critical business processes and protection of the security of PHI COUNTY
20 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
21 COUNTY kept in an electronic format in the event of an emergency. Emergency means any
22 circumstance or situation that causes normal computer operations to become unavailable for use in
23 performing the work required under this Agreement for more than 24 hours.

24 b. Data Backup Plan. CONTRACTOR must have established documented procedures to
25 backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular
26 schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of
27 the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule
28 must be a weekly full backup and monthly offsite storage of DHCS data. BCP for contractor and
29 COUNTY (e.g. the application owner) must merge with the DRP.

30 5. Paper Document Controls

31 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
32 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left
33 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means
34 that information is not being observed by an employee authorized to access the information. Such PHI
35 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
36 baggage on commercial airplanes.

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1 b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to
2 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is
3 contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

4 c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or
5 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of
6 through confidential means, such as cross cut shredding and pulverizing.

7 d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
8 creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises
9 of the CONTRACTOR except with express written permission of COUNTY.

10 e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or
11 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left
12 unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement
13 notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the
14 intended recipient before sending the fax.

15 f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or
16 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and
17 secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include
18 five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to
19 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in
20 a single package shall be sent using a tracked mailing method which includes verification of delivery
21 and receipt, unless the prior written permission of COUNTY to use another method is obtained.

22 F. BREACH DISCOVERY AND NOTIFICATION

23 1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify
24 COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a
25 law enforcement official pursuant to 45 CFR § 164.412.

26 a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which
27 such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been
28 known to CONTRACTOR.

29 b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is
30 known, or by exercising reasonable diligence would have known, to any person who is an employee,
31 officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

32 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
33 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
34 notification within 24 hours of the oral notification.

35 3. CONTRACTOR's notification shall include, to the extent possible:

36 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
37 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

1 b. Any other information that COUNTY is required to include in the notification to
2 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or
3 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day
4 period set forth in 45 CFR § 164.410 (b) has elapsed, including:

5 1) A brief description of what happened, including the date of the Breach and the date
6 of the discovery of the Breach, if known;

7 2) A description of the types of Unsecured PHI that were involved in the Breach (such
8 as whether full name, social security number, date of birth, home address, account number, diagnosis,
9 disability code, or other types of information were involved);

10 3) Any steps Individuals should take to protect themselves from potential harm
11 resulting from the Breach;

12 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to
13 mitigate harm to Individuals, and to protect against any future Breaches; and

14 5) Contact procedures for Individuals to ask questions or learn additional information,
15 which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

16 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
17 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
18 COUNTY.

19 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
20 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
21 CONTRACTOR made all notifications to COUNTY consistent with this subparagraph F and as required
22 by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or
23 disclosure of PHI did not constitute a Breach.

24 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
25 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

26 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
27 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit
28 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
29 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of
30 the Breach to COUNTY pursuant to Subparagraph F.2 above.

31 8. CONTRACTOR shall continue to provide all additional pertinent information about the
32 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after
33 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable
34 requests for further information, or follow-up information after report to COUNTY, when such request
35 is made by COUNTY.

36 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or
37 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs

1 in addressing the Breach and consequences thereof, including costs of investigation, notification,
2 remediation, documentation or other costs associated with addressing the Breach.

3 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

4 1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR
5 as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in
6 the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done
7 by COUNTY except for the specific Uses and Disclosures set forth below.

8 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary,
9 for the proper management and administration of CONTRACTOR.

10 b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the
11 proper management and administration of CONTRACTOR or to carry out the legal responsibilities of
12 CONTRACTOR, if:

13 1) The Disclosure is required by law; or

14 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI
15 is disclosed that it will be held confidentially and used or further disclosed only as required by law or for
16 the purposes for which it was disclosed to the person and the person immediately notifies
17 CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has
18 been breached.

19 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
20 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
21 CONTRACTOR.

22 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to
23 carry out legal responsibilities of CONTRACTOR.

24 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR
25 consistent with the minimum necessary policies and procedures of COUNTY.

26 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
27 required by law.

28 H. PROHIBITED USES AND DISCLOSURES

29 1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or
30 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to
31 a health plan for payment or health care operations purposes if the PHI pertains solely to a health care
32 item or service for which the health care provider involved has been paid out of pocket in full and the
33 individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

34 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
35 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
36 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by
37 42 USC § 17935(d)(2).

I. OBLIGATIONS OF COUNTY

1 COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of
2 privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
3 CONTRACTOR's Use or Disclosure of PHI.

4
5 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission
6 by an Individual to use or disclose his or her PHI, to the extent that such changes may affect
7 CONTRACTOR's Use or Disclosure of PHI.

8 3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI
9 that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction
10 may affect CONTRACTOR's Use or Disclosure of PHI.

11 4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that
12 would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

J. BUSINESS ASSOCIATE TERMINATION

13
14 1. Upon COUNTY's knowledge of a material Breach or violation by CONTRACTOR of the
15 requirements of this Business Associate Contract, COUNTY shall:

16 a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the
17 violation within thirty (30) business days; or

18 b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to
19 cure the material Breach or end the violation within (30) days, provided termination of the Agreement is
20 feasible.

21 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to
22 COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained,
23 or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

24 a. This provision shall apply to all PHI that is in the possession of Subcontractors or
25 agents of CONTRACTOR.

26 b. CONTRACTOR shall retain no copies of the PHI.

27 c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
28 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
29 destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,
30 CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit
31 further Uses and Disclosures of such PHI to those purposes that make the return or destruction
32 infeasible, for as long as CONTRACTOR maintains such PHI.

33 3. The obligations of this Business Associate Contract shall survive the termination of the
34 Agreement.

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EXHIBIT C
 AGREEMENT FOR PROVISION OF
 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH
 SPECIAL TREATMENT PROGRAM SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 EXTENDED CARE HOSPITAL OF WESTMINSTER
 JANUARY 1, 2017 THROUGH JUNE 30, 2019

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the CIPA, Civil Code § 1798.29(d).

3. "CMPPA Agreement" means the CMPPA Agreement between the SSA and CHHS.

4. "DHCS PI" shall mean Personal Information, as defined below, accessed in a database maintained by the COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Agreement on behalf of the COUNTY.

5. "IEA" shall mean the Information Exchange Agreement currently in effect between the SSA and DHCS.

6. "Notice-triggering Personal Information" shall mean the personal information identified in California Civil Code § 1798.29(e) whose unauthorized access may trigger notification requirements under California Civil Code § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.

7. "PII" shall have the meaning given to such term in the IEA and CMPPA.

8. "PI" shall have the meaning given to such term in California Civil Code § 1798.3(a).

9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of

1 information, and a civil or an authorized investigative demand. It also includes Medicare conditions of
2 participation with respect to health care providers participating in the program, and statutes or
3 regulations that require the production of information, including statutes or regulations that require such
4 information if payment is sought under a government program providing public benefits.

5 10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure,
6 modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or
7 interference with system operations in an information system that processes, maintains or stores PI.

8 B. TERMS OF AGREEMENT

9 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as
10 otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform
11 functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the
12 Agreement provided that such use or disclosure would not violate the CIPA if done by the COUNTY.

13 2. Responsibilities of CONTRACTOR

14 CONTRACTOR agrees:

15 a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or
16 required by this Personal Information Privacy and Security Contract or as required by applicable state
17 and federal law.

18 b. Safeguards. To implement appropriate and reasonable administrative, technical, and
19 physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect
20 against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use
21 or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and
22 Security Contract. CONTRACTOR shall develop and maintain a written information privacy and
23 security program that include administrative, technical and physical safeguards appropriate to the size
24 and complexity of CONTRACTOR's operations and the nature and scope of its activities, which
25 incorporate the requirements of subparagraph (c), below. CONTRACTOR will provide COUNTY with
26 its current policies upon request.

27 c. Security. CONTRACTOR shall ensure the continuous security of all computerized data
28 systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing
29 DHCS PI and PII. These steps shall include, at a minimum:

30 1) Complying with all of the data system security precautions listed in subparagraph E
31 of the Business Associate Contract, Exhibit B to the Agreement; and

32 2) Providing a level and scope of security that is at least comparable to the level and
33 scope of security established by the Office of Management and Budget in OMB Circular No. A-130,
34 Appendix III-Security of Federal Automated Information Systems, which sets forth guidelines for
35 automated information systems in Federal agencies.

36 3) If the data obtained by CONTRACTOR from COUNTY includes PII,
37 CONTRACTOR shall also comply with the substantive privacy and security requirements in the

1 CMPPA Agreement between the SSA and the CHHS and in the Agreement between the SSA and
2 DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security
3 requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic
4 Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local
5 Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that
6 any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree
7 to the same requirements for privacy and security safeguards for confidential data that apply to
8 CONTRACTOR with respect to such information.

9 d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful
10 effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or
11 its subcontractors in violation of this Personal Information Privacy and Security Contract.

12 e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and
13 conditions set forth in this Personal Information and Security Contract on any subcontractors or other
14 agents with whom CONTRACTOR subcontracts any activities under the Agreement that involve the
15 disclosure of DHCS PI or PII to such subcontractors or other agents.

16 f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or
17 COUNTY for purposes of oversight, inspection, amendment, and response to requests for records,
18 injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives
19 DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or
20 DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including
21 employees, contractors and agents of its subcontractors and agents.

22 g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist
23 the COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the
24 CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS
25 PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such
26 Breach to the affected individual(s).

27 h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR
28 agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII
29 or security incident. CONTRACTOR agrees to give notification of any beach of unsecured DHCS PI
30 and PII or security incident in accordance with subparagraph F, of the Business Associate Contract,
31 Exhibit B to the Agreement.

32 i. Designation of Individual Responsible for Security. CONTRACTOR shall designate
33 an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for
34 carrying out the requirements of this Personal Information Privacy and Security Contract and for
35 communicating on security matters with the COUNTY.

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