

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 JANUARY 1, 2017 THROUGH JUNE 30, 2019  
9

10 THIS AGREEMENT entered into this 1st day of January 2017, which date is enumerated for  
11 purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and  
12 EXTENDED CARE HOSPITAL OF WESTMINSTER, a California general partnership  
13 (CONTRACTOR). This Agreement shall be administered by the County of Orange Health Care  
14 Agency (ADMINISTRATOR).

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16 **W I T N E S S E T H:**  
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18 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Adult Mental  
19 Health Skilled Nursing Facility with Special Treatment Program Services described herein to the  
20 residents of Orange County; and

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

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

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**REFERENCED CONTRACT PROVISIONS**

**Term:** January 1, 2017 through June 30, 2019

Period One means the period from January 1, 2017 through June 30, 2017

Period Two means the period from July 1, 2017 through June 30, 2018

Period Three means the period from July 1, 2018 through June 30, 2019

**Maximum Obligation:**

Period One Maximum Obligation:	\$ 2,059,565
Period Two Maximum Obligation:	4,269,129
Period Three Maximum Obligation:	<u>4,419,129</u>
<b>TOTAL MAXIMUM OBLIGATION:</b>	<b>\$10,747,823</b>

**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@westanaheimc.com](mailto:donna@westanaheimc.com)

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**I. ACRONYMS**

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

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



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

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

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

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

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

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

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

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

**V. CONFIDENTIALITY**

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

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

2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written consents for the release of information from all persons served by CONTRACTOR pursuant to this Agreement. Such consents shall be obtained by CONTRACTOR in accordance with CCC, Division 1, 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  
12 **VI. COST REPORT**

13 A. CONTRACTOR shall submit an individual and/or consolidated Cost Report to COUNTY no  
14 later than sixty (60) calendar days following termination of this Agreement. CONTRACTOR shall  
15 prepare the individual and/or consolidated Cost Report in accordance with all applicable federal, state  
16 and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement.  
17 CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services,  
18 and funding sources in accordance with such requirements and consistent with prudent business  
19 practice, which costs and allocations shall be supported by source documentation maintained by  
20 CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event  
21 CONTRACTOR has multiple Agreements for mental health services that are administered by HCA,  
22 consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as  
23 stipulated by ADMINISTRATOR. CONTRACTOR shall submit the consolidated Cost Report to  
24 COUNTY no later than five (5) business days following approval by ADMINISTRATOR of all  
25 individual Cost Reports to be incorporated into a consolidated Cost Report.

26 1. If CONTRACTOR fails to submit an accurate and complete an individual and/or  
27 consolidated Cost Report within the time period specified above, ADMINISTRATOR shall have sole  
28 discretion to impose one or both of the following:

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

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

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

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

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

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

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

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

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

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

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_"

**VII. DEBARMENT AND SUSPENSION CERTIFICATION**

A. CONTRACTOR certifies that it and its principals:

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

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

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

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

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

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

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

3  
4 **VIII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS**

5 A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without  
6 prior written consent of COUNTY. CONTRACTOR shall provide written notification of  
7 CONTRACTOR’s intent to delegate the obligations hereunder, either in whole or part, to  
8 ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation.  
9 Any attempted assignment or delegation in derogation of this paragraph shall be void.

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

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

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

24 3. If CONTRACTOR is a governmental organization, any change to another structure,  
25 including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board  
26 of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an  
27 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of  
28 this subparagraph shall be void.

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

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

37 //



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

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

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

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

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

16  
17 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

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

27  
28 **X. EQUIPMENT**

29 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all  
30 property of a Relatively Permanent nature with significant value, purchased in whole or in part by  
31 ADMINISTRATOR to assist in performing the services described in this Agreement. “Relatively  
32 Permanent” is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or  
33 over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital  
34 Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and  
35 other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained  
36 PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to  
37 phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of

1 Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be  
2 depreciated according to GAAP.

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

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

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

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

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

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

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

31  
32 **XI. FACILITIES, PAYMENTS AND SERVICES**

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



1 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or  
2 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation  
3 for the appropriate Period as well as the Total Maximum Obligation. The reduction to the Maximum  
4 Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an amount  
5 proportionate to the number of days in which CONTRACTOR was determined to be unable to provide  
6 services, staffing, facilities or supplies.

7  
8 **XII. INDEMNIFICATION AND INSURANCE**

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

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

26 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of  
27 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR’s insurance as an  
28 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for  
29 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less  
30 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the  
31 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor  
32 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of  
33 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection  
34 by COUNTY representative(s) at any reasonable time.

35 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,  
36 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an  
37 //

1 amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the  
 2 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report.

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

5 F. QUALIFIED INSURER

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

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

14 G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum  
 15 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
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

37 //

1 H. REQUIRED COVERAGE FORMS

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

4 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA  
5 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

6 I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

13 R. SUBMISSION OF INSURANCE DOCUMENTS

14 1. The COI and endorsements shall be provided to COUNTY as follows:

- 15 a. Prior to the start date of this Agreement.
- 16 b. No later than the expiration date for each policy.
- 17 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding  
18 changes to any of the insurance types as set forth in Subparagraph G. of this Agreement.

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

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

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

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

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

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

37 //

**XIII. INSPECTIONS AND AUDITS**

1  
2 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative  
3 of the State of California, the Secretary of the United States Department of Health and Human Services,  
4 the Comptroller General of the United States, or any other of their authorized representatives, shall have  
5 access to any books, documents, and records, including but not limited to, financial statements, general  
6 ledgers, relevant accounting systems, medical and client records, of CONTRACTOR that are directly  
7 pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or conducting an  
8 audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth  
9 in the Records Management and Maintenance Paragraph of this Agreement. Such persons may at all  
10 reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the  
11 premises in which they are provided.

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

16 C. AUDIT RESPONSE

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

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

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

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

36 //  
37 //



**XIV. LICENSES AND LAWS**

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

**B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

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

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

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

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

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

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

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

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

1. ARRA of 2009.
2. WIC, Division 5, Community Mental Health Services.
3. WIC, Division 6, Admissions and Judicial Commitments.
4. WIC, Division 7, Mental Institutions.

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

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

23  
 24 **XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

34 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly  
 35 available social media sites) in support of the services described within this Agreement,  
 36 CONTRACTOR shall develop social media policies and procedures and have them available to  
 37 ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all



1 forms of social media used to either directly or indirectly support the services described within this  
2 Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as  
3 they pertain to any social media developed in support of the services described within this Agreement.  
4 CONTRACTOR shall also include any required funding statement information on social media when  
5 required by ADMINISTRATOR.

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

8  
9 **XVI. MAXIMUM OBLIGATION**

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

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

16  
17 **XVII. MINIMUM WAGE LAWS**

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

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

28 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,  
29 where applicable, shall comply with the prevailing wage and related requirements, as provided for in  
30 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the  
31 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

32  
33 **XVIII. NONDISCRIMINATION**

34 **A. EMPLOYMENT**

35 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not  
36 unlawfully discriminate against any employee or applicant for employment because of his/her race,  
37 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,

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

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

12 3. CONTRACTOR shall not discriminate between employees with spouses and employees  
13 with domestic partners, or discriminate between domestic partners and spouses of those employees, in  
14 the provision of benefits.

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

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

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

29 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not  
30 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities  
31 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental  
32 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender  
33 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the  
34 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights  
35 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division  
36 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the  
37 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq., as applicable, and all other

1 | pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and  
2 | regulations, as all may now exist or be hereafter amended or changed. For the purpose of this  
3 | Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one  
4 | or more of the factors identified above:

- 5 |       1. Denying a client or potential client any service, benefit, or accommodation.
- 6 |       2. Providing any service or benefit to a client which is different or is provided in a different  
7 | manner or at a different time from that provided to other clients.
- 8 |       3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by  
9 | others receiving any service or benefit.
- 10 |       4. Treating a client differently from others in satisfying any admission requirement or  
11 | condition, or eligibility requirement or condition, which individuals must meet in order to be provided  
12 | any service or benefit.
- 13 |       5. Assignment of times or places for the provision of services.

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

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

22 |       a. COUNTY shall establish a formal resolution and grievance process in the event  
23 | informal processes do not yield a resolution.

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

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

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

36 |       E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall  
37 | intimidate, coerce or take adverse action against any person for the purpose of interfering with rights

1 secured by federal or state laws, or because such person has filed a complaint, certified, assisted or  
2 otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to  
3 enforce rights secured by federal or state law.

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

8  
9 **XIX. NOTICES**

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

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

15 2. When faxed, transmission confirmed;

16 3. When sent by Email; or

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

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

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

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

29  
30 **XX. NOTIFICATION OF DEATH**

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

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

36 1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by  
37 telephone immediately upon becoming aware of the death due to non-terminal illness of any person

1 served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for  
2 purposes of computing the time within which to give telephone notice and, notwithstanding the time  
3 limit herein specified, notice need only be given during normal business hours.

4 2. WRITTEN NOTIFICATION

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

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

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

16  
17 **XXI. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

25  
26 **XXII. RECORDS MANAGEMENT AND MAINTENANCE**

27 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term  
28 of this Agreement, prepare, maintain and manage records appropriate to the services provided and in  
29 accordance with this Agreement and all applicable requirements.

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

35 C. CONTRACTOR’s participant, client, and/or patient records shall be maintained in a secure  
36 manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish  
37 and implement written record management procedures.



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

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

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

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

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

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

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

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

20 2. Provide auditor or other authorized individuals access to documents via a computer  
21 terminal.

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

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

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

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

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

**XXIII. RESEARCH AND PUBLICATION**

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

**XXIV. REVENUE**

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

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

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

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

**XXV. SEVERABILITY**

If a court of competent jurisdiction declares any provision of this Agreement or application thereof to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

**XXVI. SPECIAL PROVISIONS**

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



- 1           1. Making cash payments to intended recipients of services through this Agreement.
- 2           2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
- 3 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on
- 4 use of appropriated funds to influence certain federal contracting and financial transactions).
- 5           3. Fundraising.
- 6           4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
- 7 CONTRACTOR’s staff, volunteers, or members of the Board of Directors or governing body.
- 8           5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing
- 9 body for expenses or services.
- 10          6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants,
- 11 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized
- 12 agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.
- 13          7. Paying an individual salary or compensation for services at a rate in excess of the current
- 14 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary
- 15 Schedule may be found at [www.opm.gov](http://www.opm.gov).
- 16          8. Severance pay for separating employees.
- 17          9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building
- 18 codes and obtaining all necessary building permits for any associated construction.
- 19          10. Supplanting current funding for existing services.
- 20          B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR
- 21 shall not use the funds provided by means of this Agreement for the following purposes:
- 22           1. Funding travel or training (excluding mileage or parking).
- 23           2. Making phone calls outside of the local area unless documented to be directly for the
- 24 purpose of client care.
- 25           3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 26           4. Purchase of artwork or other items that are for decorative purposes and do not directly
- 27 contribute to the quality of services to be provided pursuant to this Agreement.
- 28           5. Purchasing or improving land, including constructing or permanently improving any
- 29 building or facility, except for tenant improvements.
- 30           6. Providing inpatient hospital services or purchasing major medical equipment.
- 31           7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal
- 32 funds (matching).
- 33           8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
- 34 CONTRACTOR’s clients.
- 35           //
- 36           //
- 37           //

**XXVII. STATUS OF CONTRACTOR**

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

**XXVIII. TERM**

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

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

**XXIX. TERMINATION**

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

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

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

- 1. The loss by CONTRACTOR of legal capacity.
- 2. Cessation of services.
- 3. The delegation or assignment of CONTRACTOR’s services, operation or administration to another entity without the prior written consent of COUNTY.

//

1 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty  
2 required pursuant to this Agreement.

3 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of  
4 this Agreement.

5 6. The continued incapacity of any physician or licensed person to perform duties required  
6 pursuant to this Agreement.

7 7. Unethical conduct or malpractice by any physician or licensed person providing services  
8 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR  
9 removes such physician or licensed person from serving persons treated or assisted pursuant to this  
10 Agreement.

11 D. CONTINGENT FUNDING

12 1. Any obligation of COUNTY under this Agreement is contingent upon the following:

13 a. The continued availability of federal, state and county funds for reimbursement of  
14 COUNTY's expenditures, and

15 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)  
16 approved by the Board of Supervisors.

17 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,  
18 terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given  
19 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated  
20 funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

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

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

27 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which  
28 is consistent with recognized standards of quality care and prudent business practice.

29 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract  
30 performance during the remaining contract term.

31 3. Until the date of termination, continue to provide the same level of service required by this  
32 Agreement.

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

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

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

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

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

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

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

17  
18 **XXX. THIRD PARTY BENEFICIARY**

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

22  
23 **XXXI. WAIVER OF DEFAULT OR BREACH**

24 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any  
25 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this  
26 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any  
27 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this  
28 Agreement.

29 //  
30 //  
31 //  
32 //  
33 //  
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 DocuSigned by:  
7 BY: George L. Rodes DATED: 11/1/2016  
8 EF4F68A846504AB...  
9 TITLE: Chief Financial officer

10  
11  
12 BY: \_\_\_\_\_ DATED: \_\_\_\_\_  
13  
14 TITLE: \_\_\_\_\_

15  
16  
17 COUNTY OF ORANGE

18  
19  
20 BY: \_\_\_\_\_ DATED: \_\_\_\_\_  
21 HEALTH CARE AGENCY

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

28  
29 DocuSigned by:  
30 BY: [Signature] DATED: 11/1/2016  
31 3026E89386254F6...  
32 DEPUTY

33  
34  
35 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the  
36 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer  
37 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution  
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 JANUARY 1, 2017 THROUGH JUNE 30, 2019

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 //



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

**II. BUDGET**

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

	PERIOD	PERIOD	PERIOD	TOTAL
	ONE	TWO	THREE	
<b>PROGRAM COSTS</b>				
Westminster	\$ 1,235,757	\$ 2,546,513	\$ 2,621,513	\$ 6,403,783
West Anaheim	<u>823,808</u>	<u>1,722,616</u>	<u>1,797,616</u>	<u>4,344,040</u>
<b>TOTAL PROGRAM COSTS</b>	<b>\$ 2,059,565</b>	<b>\$ 4,269,129</b>	<b>\$ 4,419,129</b>	<b>\$10,747,823</b>
<b>REVENUE</b>				
Projected Medi-Cal Revenue	\$ 6,707,235	\$ 6,863,190	\$ 7,029,289	\$20,599,714
Prior Years Excess Revenue	<u>78,000</u>	<u>78,000</u>	<u>78,000</u>	<u>234,000</u>
<b>TOTAL REVENUE</b>	<b>\$10,904,364</b>	<b>\$11,210,319</b>	<b>\$11,526,418</b>	<b>\$33,641,101</b>
<b>TOTAL MAXIMUM OBLIGATION</b>	<b>\$ 2,059,565</b>	<b>\$ 4,269,129</b>	<b>\$ 4,419,129</b>	<b>\$10,747,823</b>

**III. ISSUE RESOLUTION**

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

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

2. If the parties are unable to resolve an issue(s), CONTRACTOR shall give written notice to ADMINISTRATOR setting forth in specific terms the existence and nature of any unresolved matter or 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  
11 **IV. PATIENT'S RIGHTS**

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

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

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

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

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

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

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

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

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

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 forty-three thousand two hundred sixty dollars (\$343,260) per  
 14 month for the period January 1, 2017 through June 30, 2017.

15 2. Period Two: three hundred fifty-five thousand seven hundred sixty dollars (\$355,760) per  
 16 month for the period July 1, 2017 through June 30, 2018.

17 3. Period Three: three hundred sixty-eight thousand two hundred sixty dollars (\$368,260) per  
 18 month for the period July 1, 2018 through June 30, 2019.

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

22  
 23

	Westminster	West Anaheim
24 1. Period One	\$5,701	\$4,969
25 2. Period Two	\$5,701	\$4,969
26 3. Period Three	\$5,701	\$4,969

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

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

36 //  
 37 //

**VI. REPORTS**

**A. PROGRAMMATIC**

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

- a. Date the position became vacant;
- b. Total number of consecutive scheduled working days the position was vacant;
- c. Number of consecutive scheduled working days the position was vacant during the monthly billing period;
- d. Monthly position salary plus benefits.

2. CONTRACTOR shall submit quarterly performance outcomes as specified in the Responsibilities Paragraph of Exhibit A to the Agreement.

**B. FINANCIAL** - CONTRACTOR shall submit monthly expenditure and revenue reports on or before the 20th day of the month following the end of the month being reported.

**C. ADDITIONAL REPORTS** – CONTRACTOR shall make additional reports as required by the ADMINISTRATOR concerning CONTRACTOR's activities as they affect the contract duties and purposes contained herein. In no event, however, may the ADMINISTRATOR require such reports without at least thirty (30) days prior notification thereof. ADMINISTRATOR shall explain procedures for reporting the required information.

**D. CONTRACTOR** and ADMINISTRATOR may mutually agree, in writing, to modify the Reports of this Exhibit A to the Agreement.

**VII. SERVICES**

**A. FACILITIES**

Services shall be provided in secure facilities located at:

206 Hospital Circle	645 South Beach Blvd.
Westminster, CA 92683	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.

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

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

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

8 C. SERVICES

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

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

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

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

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

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

25 c. Diagnostic information for treatment authorization request;

26 d. Individual treatment plan;

27 e. Medication orders;

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

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

30 h. Discharge planning and continuing care services;

31 i. Clinical and neurological laboratory services;

32 j. Radiology services;

33 k. Pharmaceutical services;

34 l. Financial evaluation of each Client;

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

36 n. Collection of fees and private insurance revenue;

37 //



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

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

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

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

13 a. Individualized psychiatric medication regimen tailored to the Client's history of poor  
14 medication response, designed with a goal of maximum psychiatric symptom reduction, so that the  
15 Client can participate in other rehabilitative services.

16 b. Individualized programming based on specific Client needs identified through an  
17 interdisciplinary Client assessment.

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

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

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

30 5. CONTRACTOR shall develop and maintain a continuous quality improvement process,  
31 including the formation of a quality improvement committee, the overall goal of which is the  
32 maintenance of high quality Client care and effective utilization of services offered. This process will  
33 address utilization management, peer case review, chart review, supervisory review and medication  
34 monitoring.

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

- 1 a. Records of participation of COUNTY sponsored or other applicable training;
- 2 b. Recruitment and hiring policies and procedures;
- 3 c. Copies of literature in multiple languages and formats, as appropriate; and
- 4 d. Descriptions of measures taken to enhance accessibility for, and sensitivity to, persons
- 5 who are physically challenged.

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

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

- 11 a. Direct Services
  - 12 1) Room and dietetic services;
  - 13 2) Nursing services, including drug administration and Client care; and
  - 14 3) Client activity program, including arranging for Client transportation for activities
  - 15 outside of facility.

- 16 b. Support Services
  - 17 1) Housekeeping;
  - 18 2) Laundry;
  - 19 3) Maintenance;
  - 20 4) Medical records;
  - 21 5) Drug order processing;
  - 22 7) Provision for emergency medical and ancillary services; and
  - 23 8) Arrange for transportation to and from medical appointments.

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

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

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

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E. PERFORMANCE OUTCOMES

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

- a. The total number of Clients discharged to a less restrictive level of care;
- b. The total number of Clients who participate in a pre-vocational or educational training program; and
- c. The total hours Clients are in a pre-vocational or educational training program.

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

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

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

**VIII. STAFFING**

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

WESTMINSTER TRC	FTEs
Director of Nursing	1.00
Registered Nurse	1.00
Licensed Vocational Nurse	7.00
Certified Nursing Assistant	17.40
O.T. Activity Assistant	2.00
Ward Clerk	1.00
Program Director	1.00
Social Worker	1.00
Mental Health Worker/MH Spec	10.00
Clerk/Typist	1.00
Subcontractor	<u>.90</u>
<b>TOTAL FTEs</b>	<b>43.30</b>

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1	WEST ANAHEIM TRC	FTEs
2	Director of Nursing	1.00
3	Licensed Vocational Nurse	9.50
4	Certified Nursing Assistant	18.00
5	O.T. Activity Assistant	2.00
6	Ward Clerk	1.50
7	Program Director	1.00
8	Social Worker	1.00
9	Mental Health Worker/MH Spec	7.00
10	Subcontractor	<u>.90</u>
11	TOTAL FTEs	41.90

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

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

D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the 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 JANUARY 1, 2017 THROUGH JUNE 30, 2019

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 45  
35 CFR § 164.501.

36 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45  
37 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 45 CFR §  
12 160.103.

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 45 CFR §  
33 160.103.

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 45  
36 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:

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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 45 CFR  
12 § 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.

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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 42 USC §  
37 17935(d)(2).



1 I. OBLIGATIONS OF COUNTY

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

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.

13 J. BUSINESS ASSOCIATE TERMINATION

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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1 EXHIBIT C  
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 JANUARY 1, 2017 THROUGH JUNE 30, 2019

10  
11 **I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT**

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

14 A. DEFINITIONS

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

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

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

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

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

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

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

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

35 9. "Required by law" means a mandate contained in law that compels an entity to make a use  
36 or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court  
37 orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental

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

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

9 B. TERMS OF AGREEMENT

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

14 2. Responsibilities of CONTRACTOR

15 CONTRACTOR agrees:

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

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

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

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

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

37 //

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

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

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

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

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

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

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