



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-19

For the meeting of: 6/28/2016

Date: June 14, 2016

To: Board of Supervisors

From: Connie Beck, Director *[Signature]*
Department of Health and Human Services-Mental Health

Subject: Agreement between Humboldt County and Helios Healthcare, LLC. – DBA Idylwood Care Center for Fiscal Years 2016-17 through 2018-19

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approves the agreement between Humboldt County and Helios Healthcare, LLC. – D.B.A. Idylwood Care Center for fiscal years 2016-17 through 2018-19;
2. Authorizes the Chair of the Board of Supervisors to execute three (3) originals of the agreement between Humboldt County and Helios Healthcare, LLC – DBA Idylwood Care Center for fiscal years 2016-17 through 2018-19; and
3. Directs the Clerk of the Board to return two (2) executed originals of the agreement to the Department of Health and Human Services (DHHS) - Contract Unit for forwarding to DHHS - Mental Health.

SOURCE OF FUNDING:

Mental Health Fund

DISCUSSION:

Humboldt County Department of Health and Human Services (DHHS)-Mental Health, in coordination with

Prepared by Joseph Demlow, Administrative Analyst II CAO Approval *[Signature]*

REVIEW: Auditor *[Signature]* County Counsel *[Signature]* Personnel _____ Risk Manager *[Signature]* Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *Sundberg* Seconded by Supervisor *Bass*
Ayes *Sundberg, Fennell, Lovelace, Bohn, Bass*
Nays _____
Abstain _____
Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. C-8, C-21, C-13, C-5
Meeting of: 6/28/11, 2/26/12, 6/25/13, 6/3/14

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: June 28, 2016
By: *[Signature]*
Kathy Hayes, Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
HELIOS HEALTHCARE, LLC – DBA IDYLWOOD CARE CENTER
FOR FISCAL YEARS 2016-2017 THROUGH 2018-2019**

This Agreement, entered into this 28th day of June, 2016, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and Helios Healthcare, LLC – DBA Idylwood Care Center, a California limited liability company, hereinafter referred to as “CONTRACTOR,” is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Health and Human Services – Mental Health (“DHHS – Mental Health”), desires to retain a qualified skilled nursing facility to provide a long-term residential treatment program for adults with chronic mental illnesses; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced and competent to perform the special services required by COUNTY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DESCRIPTION OF SERVICES:

CONTRACTOR agrees to furnish the services described in Exhibit A – Scope of Services, which is attached hereto and incorporated herein by reference. In providing such services, CONTRACTOR agrees to fully cooperate with the DHHS – Mental Health Director or designee thereof, hereinafter referred to as “Director.”

2. TERM:

This Agreement shall begin on July 1, 2016 and shall remain in full force and effect until June 30, 2019, unless sooner terminated as provided herein.

3. TERMINATION:

- A. Breach of Contract. If, in the opinion of COUNTY, CONTRACTOR fails to adequately perform the services required hereunder within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or other law applicable to its performance herein, COUNTY may terminate this Agreement immediately, upon notice.
- B. Without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice to CONTRACTOR. Such notice shall state the effective date of the termination.

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- C. Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONTRACTOR seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation Upon Termination. In the event of any termination of this Agreement, CONTRACTOR shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONTRACTOR.

4. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is Three Hundred Eighty-Seven Thousand Six Hundred Thirty Dollars (\$387,630.00). In no event shall the maximum amount paid under this Agreement exceed One Hundred Twenty-Nine Thousand Two Hundred and Ten Dollars (\$129,210.00) per fiscal year for fiscal years 2016-2017, 2017-2018, and 2018-2019. CONTRACTOR agrees to perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable for services provided hereunder, or terminate this Agreement as provided herein.
- B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in Exhibit B – Schedule of Rates, which is attached hereto and incorporated herein by reference.
- C. Additional Services. Any additional services not otherwise provided for herein, shall not be provided by CONTRACTOR, or compensated by COUNTY, without written authorization by COUNTY. All unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of CONTRACTOR. CONTRACTOR shall notify COUNTY in writing, at least six weeks prior to the date upon which CONTRACTOR estimates that the maximum payable amount will be reached.

5. PAYMENT:

CONTRACTOR shall submit to COUNTY monthly invoices itemizing all services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement by the tenth (10th) day of each month. Invoices shall be in a format approved by Director and the Humboldt County Auditor-Controller, and shall include the date that each service was provided, the total number of service hours provided per day, the total cost per day and the total cost for the month. Payment for services rendered, and costs and expenses incurred, hereunder shall be made within thirty (30) days of receipt of approved invoices. All invoices submitted by CONTRACTOR shall be sent to COUNTY at the following address:

COUNTY: Humboldt County DHHS – Mental Health
 Attention: Financial Services
 507 F Street
 Eureka, California 95501

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6. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County DHHS-Mental Health
Attention: Mental Health Director
720 Wood Street
Eureka, California 95501

CONTRACTOR: Helios Healthcare, LLC
Attention: Director
P.O. Box 980483
West Sacramento, California 95798

7. REPORTS:

- A. General Reporting. CONTRACTOR agrees to provide COUNTY with any and all reports that may be required by local, state and/or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.
- B. Final Cost Report. If applicable to a specific local, state or federal funding source covered by this Agreement, CONTRACTOR shall submit an unaudited Final Cost Report summarizing all costs incurred pursuant to the terms and conditions of this Agreement, no later than ninety (90) days following the close of the fiscal year, in accordance with all applicable local, state and federal laws, regulations and guidelines.

8. AUDIT AND RETENTION OF PERFORMANCE RECORDS:

- A. Maintenance of Records. CONTRACTOR shall maintain books, records, documents, and other evidence of CONTRACTOR's accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including, without limitation, any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- B. Government Access to Records and Facilities. CONTRACTOR's facility or office, or such part thereof as may be engaged in the performance of this Agreement, and its records shall be subject at all reasonable times to inspection, audit and reproduction by COUNTY, the California Department of Health Care Services ("DHCS"), the California Department of General Services, the Bureau of State Audits, or their designated representatives, including, without limitation, the Comptroller General of the United States, and any other duly authorized local, state or federal agencies.
- C. General Examination and Audit. CONTRACTOR agrees that COUNTY, DHCS, the California Department of General Services, the Bureau of State Audits, or their designated representatives, including the Comptroller General of the United States, and any other duly authorized local, state or federal agencies, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. CONTRACTOR agrees to allow COUNTY, DHCS and any other duly authorized local, state

or federal agencies access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

- D. Examination and Audit by the California State Auditor. Pursuant to California Government Code Section 8546.7, CONTRACTOR shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under this Agreement. CONTRACTOR shall hold COUNTY harmless for any liability resulting from said audit.
- E. Preservation of Records. CONTRACTOR shall preserve and make available its records for a period of three (3) years from the date of final payment under this Agreement, and for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement or by subparagraphs 1 or 2 below.
 - 1. If this Agreement is completely or partially terminated, the records relating to the terminated services shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.
 - 2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of all issues which arise there from, or until the end of the regular three (3) year period, whichever is later.
- F. Legal Compliance. CONTRACTOR shall comply with the above-referenced requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Section 10115.10 of the California Public Contract Code, if applicable.
- G. Record Storage and Reproduction. CONTRACTOR may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD or other data storage medium. Upon request by a designated representative of COUNTY, DHCS or any other duly authorized local, state or federal agencies to inspect, audit or obtain copies of said records, CONTRACTOR must supply or make available applicable devices, hardware and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers.

9. MONITORING:

CONTRACTOR agrees that COUNTY and any other duly authorized local, state or federal agencies, including, without limitation, DHCS, have the right to monitor all activities related to this Agreement, including the right to review and monitor CONTRACTOR's records, programs or procedures, at any time, as well as the overall operation of CONTRACTOR's programs in order to ensure compliance with the terms and conditions of this Agreement. CONTRACTOR will cooperate with a corrective action plan, if deficiencies in CONTRACTOR's records, programs or procedures are identified by COUNTY or any other duly authorized local, state or federal agencies. However, COUNTY is not responsible, and shall not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by CONTRACTOR pursuant to the terms and conditions of this Agreement.

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10. CONFIDENTIAL INFORMATION:

- A. Legal Compliance. CONTRACTOR hereby agrees to protect all confidential records and client confidentiality in conformance with any and all applicable local, state and federal laws and regulations, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health & Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology and Clinical Health Act (“HITECH Act”); the United States Health Information Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162; 42 C.F.R. Sections 431.300, et seq.; and 45 C.F.R. Section 205.50, all as may be amended from time to time. CONTRACTOR further agrees to comply with any and all applicable privacy, security, and confidentiality requirements contained in the Mental Health Performance Agreement (State Standard Agreement No. 15-29091) that COUNTY has with DHCS, which are incorporated herein by reference and made a part hereof as if set forth in full.
- B. Continuing Compliance with Confidentiality Laws. COUNTY and CONTRACTOR acknowledge that local, state and federal laws, regulations, standards and contractual requirements pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations, standards or contractual requirements.

11. DISCLOSURE AND SECURITY REQUIREMENTS:

- A. Definitions. For purposes of this provision, the following definitions shall apply:
1. Public Information. As used herein, the term “Public Information” shall include, without limitation, any information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code Sections 6250, et seq.) or any other applicable local, state or federal laws or regulations.
 2. Exempt Information. As used herein, the term “Exempt Information” shall include, without limitation, any information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code Sections 6250, et seq.) or any other applicable local, state or federal laws or regulations.
 3. Sensitive Information. As used herein, the term “Sensitive Information” shall include, without limitation, any information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss or deletion. Sensitive Information may be either Public Information or Exempt Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of an agency’s financial transactions and regulatory actions.

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4. Personal Information. As used herein, the term “Personal Information” shall include, without limitation, any information that identifies or describes an individual, including, but not limited to, their name, physical description, home address, home telephone number, education, financial matters and medical or employment history. It is DHCS’ policy to consider all information about individuals private unless such information is determined to be a public record. This information must be protected from inappropriate access, use or disclosure and must be made accessible to data subjects upon request.
 5. Personally Identifiable Information. As used herein, the term “Personally Identifiable Information” shall include, without limitation, any information which can be used to distinguish or trace an individual’s identity, such as their social security number, driver license number, identification card number, financial account number or other identifying number, symbol or particular assigned to the individual, including, but not limited to, finger prints, voice prints and photographs (California Civil Code Sections 1798.29 and 1798.82).
 6. Protected Health Information. As used herein, the term “Protected Health Information” shall include, without limitation, individually identifiable health information that is transmitted by electronic media, maintained in electronic media or is transmitted or maintained in any other form or medium, as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, as codified at 45 C.F.R. Parts 160 and 164, and the Federal Security Standards contained in 45 C.F.R. Parts 160 and 164, all as may be amended from time to time.
- B. Nondisclosure of Identifying Information. In connection with the execution of this Agreement, CONTRACTOR shall protect from unauthorized disclosure the names and other identifying information, including Personal Information (“PI”), Personally Identifiable Information (“PII”), Sensitive Information and Exempt Information (referred to collectively as “PSEI”), concerning persons either receiving services pursuant to this Agreement or persons whose PSEI becomes available to CONTRACTOR or is disclosed to CONTRACTOR as a result of services performed under this Agreement, except for statistical information not identifying any such person.
1. Unauthorized Disclosures of Identifying Information. CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any PSEI to anyone other than COUNTY or DHCS without prior written authorization from COUNTY or the DHCS Program Contract Manager, except if disclosure is required by local, state or federal law.
 2. Use of Identifying Information. CONTRACTOR shall not use any PSEI for any purpose other than carrying out CONTRACTOR’s duties and obligations under this Agreement.
 3. Notification of Requests for Identifying Information. CONTRACTOR shall promptly transmit to COUNTY all requests for disclosure of any PSEI not emanating from a client, patient or person whose PSEI becomes available to CONTRACTOR or is disclosed to CONTRACTOR as a result of services performed under this Agreement.
- C. Nondisclosure of Protected Health Information. In connection with the execution of this Agreement, CONTRACTOR shall protect from unauthorized disclosure any and all Protected Health Information (“PHI”) concerning persons either receiving services pursuant to this Agreement or persons whose PHI becomes available to CONTRACTOR or is disclosed to CONTRACTOR as a result of services performed under this Agreement.

1. Use and Disclosure of Protected Health Information. CONTRACTOR shall not use or disclose PHI in any manner that would constitute a breach of this Agreement or a violation of any applicable local, state or federal laws, regulations, rules or standards.
 2. Minimum Use and Disclosure of Protected Health Information. CONTRACTOR shall use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of this Agreement.
 3. Compliance with Legal Standards Pertaining to Protected Health Information. CONTRACTOR shall only use, store, disclose or access PHI in compliance with this Agreement and all applicable local, state and federal laws, regulations, rules and standards.
 4. Downloading Protected Health Information. CONTRACTOR shall not download PHI to any personal device, including, but not limited to, flash drives, cell phones, iPads or tablets without the prior written approval of COUNTY.
 5. Maintenance and Preservation of Disclosure Records. CONTRACTOR agrees to timely prepare accurate and complete performance records relating to the use and disclosure of PHI transmitted pursuant to this Agreement, and to maintain and preserve said records for at least three (3) years from the date of expiration or termination of this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising there from.
 6. Accounting Requirements. CONTRACTOR shall comply with the accounting requirements of 45 C.F.R. Section 164.528 and any associated regulations or informal guidance issued by the United States Department of Health and Human Services – Office of Civil Rights, all as may be amended from time to time.
- D. Security Incidents and Suspected Breaches of Confidential Information. If CONTRACTOR has reason to believe that PSEI or PHI transmitted pursuant to this Agreement may have been accessed, disclosed or acquired in breach of the terms and conditions set forth herein, CONTRACTOR shall immediately take all actions necessary to preserve forensic evidence and to identify, mitigate and remediate the cause of the suspected breach. Such actions include, but are not limited to, the following:
1. Reporting Breaches of Confidential Information. CONTRACTOR shall notify COUNTY immediately, by telephone call and e-mail or fax, upon the discovery of a breach of PSEI or PHI in electronic media or in any other media, if the PSEI or PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person.
 2. Reporting Suspected Security Incidents. CONTRACTOR shall notify COUNTY, by telephone call and e-mail or fax, within twenty four (24) hours after discovering any other suspected security incident, intrusion, loss or unauthorized use or disclosure of PSEI or PHI in violation of this Agreement or any applicable local, state or federal law.
 - a. Discovery of Breaches and Security Incidents. For purposes of this Agreement, a breach of, or security incident involving, PSEI or PHI shall be treated as discovered by CONTRACTOR as of the first day on which such breach is known, or by exercising reasonable diligence would have been known, to CONTRACTOR or any person, other than the person committing the suspected breach, who is an employee, officer or other agent of CONTRACTOR.

3. Reporting Suspected Breaches and Security Incidents to Affected Individuals. To the extent deemed warranted, CONTRACTOR shall provide notice to any and all individuals affected by the suspected breach of, or security incident involving, PSEI or PHI. CONTRACTOR shall pay the full costs associated with notifying the impacted individuals, which may include, but are not limited to, the costs to retain an outside consulting firm to undertake the notification effort. In addition, CONTRACTOR shall consult with COUNTY regarding the steps required to notify impacted individuals and any other persons, media outlets or governmental agencies, and must supply COUNTY with the following information:
 - a. Description of Suspected Breach or Security Incident. A brief description of the circumstances surrounding the suspected breach of, or security incident involving, PSEI or PHI, including, without limitation, the date of occurrence and discovery thereof, if known.
 - b. Description of the Information Involved. A description of the types of unsecured PSEI or PHI that were involved in the suspected breach or security incident, including, but not limited to, the full name, social security number, date of birth, home address, account number or disability code of all affected third parties.
 - c. Description of Remedial Actions. A brief description of the actions being taken by CONTRACTOR to remediate the breach of, or security incident involving, PSEI or PHI, mitigate losses and protect against any further breaches or security incidents.
4. Investigation of Suspected Breaches and Security Incidents. CONTRACTOR shall immediately investigate any and all suspected breaches of, or security incidents involving, PSEI or PHI. Within seventy two (72) hours of the discovery of such suspected breach or security incident, CONTRACTOR shall submit an updated "Privacy Incident Report" containing the applicable information to the extent known at that time.
5. Remediation of Breaches and Security Incidents. Upon discovery of a breach of, or security incident involving, PSEI or PHI, CONTRACTOR shall:
 - a. Corrective Action. Take prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment.
 - b. Legal Compliance. Take any action pertaining to such breach or security incident required by any and all applicable local, state and federal laws and regulations.
6. Cooperation with COUNTY's Remediation Efforts. Upon discovery of a breach of, or security incident involving, PSEI or PHI, CONTRACTOR shall give highest priority to immediately mitigating and remediating the breach or security incident, and shall devote such resources as may be required to accomplish that goal. In addition, CONTRACTOR shall cooperate with COUNTY's mitigation and remediation efforts, including, without limitation, providing any and all information necessary to enable COUNTY to fully understand the nature and scope of the breach or security incident, including, but not limited to, identification of each individual whose unsecured PHI may have been improperly accessed, acquired or disclosed. In the event that CONTRACTOR's assistance is required to reinstall software, such assistance shall be provided at no cost to COUNTY and in accordance with COUNTY's policies and standards.

7. Remediation Report. CONTRACTOR shall provide to COUNTY a written report of the investigation of a breach of, or security incident involving, PSEI or PHI within ten (10) business days of the discovery of such breach or security incident. The report shall include, without limitation, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to remediate and/or contain the breach or security incident.

E. Safeguarding Confidential Information. CONTRACTOR shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of all PSEI and PHI related to the services provided pursuant to the terms and conditions of this Agreement, including, without limitation, electronic PSEI and PHI that CONTRACTOR creates, receives, maintains, uses or transmits on behalf of COUNTY. CONTRACTOR shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities, including, at a minimum, the following safeguards:

1. Personnel Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:

- a. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of CONTRACTOR, or access or disclose PSEI or PHI, must complete information privacy and security training, at least annually, at their own expense. Each workforce member who receives information privacy and security training must sign a certification indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following expiration or termination of this Agreement.
- b. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with the privacy policies and procedures or any of the privacy, security and confidentiality requirements contained herein, including termination of employment where appropriate.
- c. Confidentiality Statement. All persons that will be working with PHI, PI or PII must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use and Enforcement Policies. The statement must be signed by the workforce member prior to gaining access to PHI, PI or PII. The statement must be renewed annually. CONTRACTOR shall retain each person's written confidentiality statement for inspection for a period of six (6) years following expiration or termination of this Agreement.
- d. Background Check. Before a member of the workforce may access PHI, PI or PII, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. CONTRACTOR shall retain each workforce member's background check documentation for a period of three (3) years following expiration or termination of this Agreement.

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2. Technical Security Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
- a. Workstation and Laptop Encryption. All workstations and laptops that process and/or store PHI, PI or PII either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (“AES”). The encryption solution must be full disk unless approved by the DHCS – Information Security Office.
 - b. Server Security. Servers containing unencrypted PHI, PI or PII must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
 - c. Minimum Necessary. Only the minimum necessary amount of PHI, PI or PII required to perform necessary business functions may be copied, downloaded or exported.
 - d. Removable Media Devices. All electronic files that contain PHI, PI or PII data must be encrypted when stored on any removable media or portable device, including, without limitation, USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes, etc. Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
 - e. Antivirus Software. All workstations, laptops and other systems that process and/or store PHI, PI or PII must install and actively use a comprehensive anti-virus software solution with automatic updates scheduled at least daily.
 - f. Patch Management. All workstations, laptops and other systems that process and/or store PHI, PI or PII must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of vendor release. Applications and systems that cannot be patched within the required time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
 - g. Data Destruction. When no longer needed, all PHI, PI or PII must be wiped using the Gutmann or United States Department of Defense (“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 of the DHCS – Information Security Office.
 - h. User Identification and Password Controls. All users must be issued a unique user name for accessing PHI, PI or PII. Usernames must be promptly disabled, deleted or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within twenty four (24) hours. Passwords are not to be shared. Passwords must be at least eight (8) characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every ninety (90) days, preferably every sixty (60) days. Passwords must be changed if revealed or compromised.

Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z);
 - Lower case letters (a-z);
 - Arabic numerals (0-9);
 - Non-alphanumeric characters (punctuation symbols).
- i. System Timeout. The system providing access to PHI, PI or PII 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, PI or PII must display a warning banner stating that data is confidential, systems are logged and system use is for business purposes only by authorized users. Users 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, PI or PII or alters PHI, PI or PII. 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 PHI, PI or PII is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after occurrence.
- l. Access Controls. The system providing access to PHI, PI or PII must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission Encryption. All data transmissions of PHI, PI or PII 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, PI or PII in motion such as website access, file transfer and E-Mail.
- n. Intrusion Detection. All systems involved in accessing, holding, transporting and protecting PHI, PI or PII that are accessible via the internet must be protected by a comprehensive intrusion detection and prevention solution.
3. Audit Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
- a. System Security Review. CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI, PI or PII must have at least an annual system risk assessment/security review which provides assurance that administrative, physical and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

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- b. Log Reviews. All systems processing and/or storing PHI, PI or PII must have a routine procedure in place to review system logs for unauthorized access.
 - c. Change Control. All systems processing and/or storing PHI, PI or PII must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.
 4. Business Continuity and Disaster Recovery Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
 - a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI, PI or PII held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty four (24) hours.
 - b. Data Backup Plan. CONTRACTOR must have established documented procedures to backup PHI to maintain retrievable exact copies of PHI, PI or PII. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media and an estimate of the amount of time needed to restore PHI, PI or PII should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of data.
 5. Paper Document Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
 - a. Supervision of Data. PHI, PI or PII in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. PHI, PI or PII in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
 - b. Escorting Visitors. Visitors to areas where PHI, PI or PII is contained shall be escorted, and PHI, PI or PII shall be kept out of sight while visitors are in the area.
 - c. Confidential Destruction. PHI, PI or PII must be disposed of through confidential means, such as cross cut shredding and pulverizing.
 - d. Removal of Data. Only the minimum necessary amount of PHI, PI or PII may be removed from the premises of CONTRACTOR except with express written permission from COUNTY. PHI, PI or PII shall not be considered "removed from the premises," if it is only being transported from one of CONTRACTOR's locations to another of CONTRACTOR's locations.
 - e. Faxing. Faxes containing PHI, PI or PII shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

- f. Mailings. Mailings containing PHI, PI or PII shall be sealed and secured from damage or inappropriate viewing of such PHI, PI or PII to the extent possible. Mailings which include five hundred (500) or more individually identifiable records of PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission to use another method is obtained.

12. HIPAA COMPLIANCE-COVERED ENTITY TO COVERED ENTITY:

Each party hereto considers and represents itself to be a “covered entity,” as that term is defined by HIPAA, and agrees to use and disclose PHI, PI and PII in accordance with any and all applicable laws and regulations. COUNTY and CONTRACTOR acknowledge that the exchange of PHI, PI and/or PII between them shall only be for the purposes of treatment, payment and health care operations.

13. PREPARATION AND RETENTION OF MEDICAL RECORDS AND DOCUMENTATION:

A. Preparation of Medical Records. CONTRACTOR shall timely prepare and maintain, for each client who receives services pursuant to the terms and conditions of this Agreement, a legible, accurate and complete “Medical Record” in accordance with any and all appropriate medical and professional practice requirements promulgated by the California Health and Welfare Agency. Medical records prepared and maintained pursuant to the terms and conditions of this Agreement shall contain sufficient detail to permit and facilitate effective internal professional review, external medical audit processes and adequate follow-up treatment.

1. For purposes of this provision, “Medical Records” shall include, without limitation, all physical, books, records, documents and other evidence of medical treatment originated or prepared as part of CONTRACTOR’s performance of the specialty mental health services, and all other covered services, to be provided under this Agreement, including, but not limited to, all treatment records, medical charts and prescription files and other documentation pertaining to services rendered to clients.

B. Preparation of Medical Documentation. CONTRACTOR shall timely prepare and maintain all “Medical Documentation,” as necessary to disclose how CONTRACTOR discharged its duties and obligations hereunder. Medical Documentation shall identify all of the following: the quantity and quality of the specialty mental health services, and all other covered services, provided pursuant to the terms and conditions of this Agreement; the names of, and all other necessary identifying information pertaining to, clients who received such services; the manner in which CONTRACTOR administered the provision of such services and the cost thereof; and the manner and amount of payment made for such services.

1. For purposes of this provision, “Medical Documentation” shall include, without limitation, all physical, books, records, documents and other evidence of medical treatment originated or prepared as part of CONTRACTOR’s performance of the specialty mental health services, and all other covered services, to be provided under this Agreement, including, but not limited to, working papers, reports submitted to COUNTY or DHCS, financial records and other documentation pertaining to services rendered to clients.

C. Maintenance and Preservation of Medical Records and Documentation. CONTRACTOR shall maintain and preserve all Medical Records and Medical Documentation for a period of three (3) years from the date final payment is made under this Agreement, and for such longer

period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs 1 or 2 below.

1. If this Agreement is completely or partially terminated, the Medical Records and/or Medical Documentation relating to the terminated services shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.
2. If any litigation, claim, negotiation, audit or other action involving the Medical Records and/or Medical Documentation has been started before the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of all issues which arise there from, or until the end of the regular three (3) year period, whichever is later.

D. Government Access to Medical Records and Documentation. CONTRACTOR agrees that any and all Medical Records and/or Medical Documentation prepared pursuant to the terms and conditions of this Agreement shall be subject at all reasonable times to inspection, audit and reproduction by COUNTY, DHCS, the California Department of General Services, the Bureau of State Audits, or their designated representatives, including, without limitation, the Comptroller General of the United States, and any other duly authorized local, state or federal agencies.

14. ADMISSION REQUIREMENTS:

A. Admission Policies. In order for proper reimbursement of the specialty mental health services, and all other covered services, provided pursuant to the terms and conditions of this Agreement, CONTRACTOR must comply with all of the following:

1. All referrals to CONTRACTOR must be authorized by Director; however, the final admission decision shall rest with CONTRACTOR.
 - a. CONTRACTOR shall consider for admission, COUNTY clients that have been previously diagnosed with a mental illness found in the Fifth Edition of the Diagnostic and Statistical (“DSM-V”) or the Tenth Edition of the International Statistical Classification of Diseases and Related Health Problems (“ICD-10”) who are displaying, or have a history of displaying, behavioral symptoms, including, but not limited to, combativeness, elopement risk, suicide risk and excessive verbal abusiveness, which preclude them from being admitted into lower level care facilities. CONTRACTOR shall take into account the frequency, scope, and severity of each client’s behavioral symptoms prior to making a final admission decision.
 - b. The parties hereby agree that individuals whose mental illness is deemed appropriate for acute care, as well as individuals suffering exclusively from development disability, mental retardation or physical illnesses, without a psychiatric component, shall not be referred to CONTRACTOR for admission.
2. All COUNTY clients shall be subject to screening procedures and standards that are mutually agreeable to both parties prior to being admitted to CONTRACTOR’s facility.
3. In the event that admission is denied, Director shall be immediately notified and informed of the reasons leading to the denial. After receiving notification of an admission denial, COUNTY may request as appropriate, that a “case conference” be held

to discuss the reasons for the denial and the options available in meeting the client's mental health treatment needs.

4. CONTRACTOR's policies and procedures for admission shall be based on this Agreement. Policies must include a provision that patients are accepted for care without discrimination on the basis of race, color, religion, gender, national origin, age, sexual orientation or physical or mental disability.
5. In recognition of the fact that DHHS – Mental Health has specific responsibilities for the long-term case coordination of COUNTY patients referred to CONTRACTOR, CONTRACTOR agrees to participate in and accept the overall care plan for such patients, including, but not limited to, discharge planning and timeliness, as a condition of acceptance of the patient for admission.

- B. Admission Priority. CONTRACTOR shall provide COUNTY with periodic reports of openings in CONTRACTOR's facility, and give priority to the admission of COUNTY's patients.
- C. Discharge Criteria. CONTRACTOR reserves the right to discharge any COUNTY client that has achieved a level of stability, including, without limitation, symptom management, recognition of triggers of relapse, active participation in a wellness plan and identification of a personal support system that will allow the client to live in a less restrictive environment. Both parties agree that CONTRACTOR may discharge any COUNTY client that formally declines, or becomes ineligible for, the services being provided pursuant to the terms and conditions of this Agreement.

15. DETERMINATION OF ABILITY TO PAY:

If so instructed by Director, CONTRACTOR shall determine client's share of the cost associated with the specialty mental health services, or any other covered services, provided pursuant to the terms and conditions of this Agreement using the State of California's Uniform Method of Determining the Ability to Pay, and notify COUNTY of such determination. Such determinations shall be made any time there is a demonstrable change in client's financial status, but no less than annually. CONTRACTOR agrees that a client's inability to pay shall not be a bar to CONTRACTOR's services. However, CONTRACTOR further agrees that a client's unwillingness to pay may bar services, except in emergencies, following consultation with COUNTY. COUNTY agrees to provide training in the determination of ability to pay.

16. UTILIZATION REVIEW:

COUNTY may designate appropriate DHHS – Mental Health staff to perform a utilization and/or professional standards review of all patients for which COUNTY is expected to make reimbursement.

17. PATIENTS' RIGHTS:

- A. Legal Compliance. The parties to this Agreement shall comply with any and all applicable local, state and federal laws and regulations relating to patients' rights, including, but not limited to, California Welfare and Institutions Code Section 5325, Title 9 of the California Code of Regulations Sections 860 through 868 and 42 C.F.R. Section 438.100.

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- B. Specific Rights. During the performance of this Agreement, the parties hereto shall comply with any and all applicable local, state and federal policies and procedures pertaining to patients' rights, and shall ensure that its staff and subcontractors take those rights into account when providing services pursuant to the terms and conditions of this Agreement, including, without limitation, the right to:
1. Receive information in accordance with 42 C.F.R. Section 438.10.
 2. Be treated with respect and with due consideration for his or her dignity and privacy.
 3. Receive information on available treatment options and alternatives, presented in a manner appropriate to his or her condition and ability to understand.
 4. Participate in decisions regarding his or her health care, including the right to refuse treatment.
 5. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience or retaliation.
 6. Request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. Sections 164.524 and 164.526.
 7. To be furnished services in accordance with 42 C.F.R. Sections 438.206 through 438.210.
 8. To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way in which CONTRACTOR treats the patient.
- C. Effect of Provision. Nothing herein shall be construed to replace or conflict with the duties of patients' rights advocates set forth in California Welfare and Institutions Code Section 5520.

18. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONTRACTOR further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies

and Procedures; United States Executive Order 11246, as amended and supplemented by United States Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

- C. Notification to Labor Unions and/or Workers' Representatives. CONTRACTOR shall send written notice of its obligations under the provisions herein to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.

19. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

CONTRACTOR certifies by its signature below that it is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR subsequently becomes a Nuclear Weapons Contractor.

20. DRUG FREE WORKPLACE CERTIFICATION:

By executing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.), and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
1. The dangers of drug abuse in the workplace;
 2. CONTRACTOR's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:

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1. Receive a copy of CONTRACTOR's Drug-Free Policy Statement; and
 2. Agree to abide by the terms of CONTRACTOR's Drug-Free Policy as a condition of employment.
- D. Effect of Non-Compliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement, and/or termination thereof, and CONTRACTOR may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if CONTRACTOR violates the certification by failing to carry out the above-referenced requirements.

21. INDEMNIFICATION:

- A. A. CONTRACTOR shall indemnify, defend and hold harmless COUNTY and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with CONTRACTOR'S duties and obligations under this Agreement and any amendments hereto.
- B. COUNTY shall indemnify, defend and hold harmless CONTRACTOR and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with COUNTY's duties and obligations under this Agreement and any amendments hereto.
- C. Notwithstanding paragraphs A and B, in the event that CONTRACTOR and COUNTY are both held to be negligently or willfully responsible, CONTRACTOR and COUNTY will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorney's fees.
- D. Acceptance of insurance, if required by this Agreement, does not relieve CONTRACTOR from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by CONTRACTOR's operations regardless if any insurance is applicable or not.

22. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting CONTRACTOR's indemnification obligations provided for herein, CONTRACTOR shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Best's rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than One Million Dollars (\$1,000,000.00) for each occurrence (Three Million Dollars (\$3,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONTRACTOR may be exposed to liability. CONTRACTOR shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that CONTRACTOR shall not terminate such coverage until COUNTY receives adequate

proof that equal or better insurance has been secured.

3. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
4. For claims related to this Agreement, CONTRACTOR's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR's insurance and will not be used to contribute therewith.
5. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.
6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost thereof. COUNTY is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to CONTRACTOR under this Agreement.
7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

CONTRACTOR: Helios Healthcare, LLC
Attention: Director
P.O. Box 980483
West Sacramento, California 95798

23. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation.

24. COMPLIANCE WITH LAWS AND LICENSURE REQUIREMENTS:

- A. Legal Compliance. CONTRACTOR agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the services provided pursuant to the terms and conditions of this Agreement.
- B. Humboldt County Mental Health Performance Agreement. CONTRACTOR agrees to comply with all provisions applicable to subcontractors in the Mental Health Performance Agreement (State Standard Agreement No. 15-92091) that COUNTY has with DHCS, which are incorporated herein by reference and made a part hereof as if set forth in full. The above-referenced agreement can be obtained online at the following address: <http://humboldt.legistar.com/gateway.aspx?M=F&ID=c72dd39b-ceaa-4525-a547-bad44bd2ce6f.pdf>.
- C. Licensure Requirements. CONTRACTOR agrees to comply with any and all local, state and federal licensure, certification and accreditation standards applicable to the services provided pursuant to the terms and conditions of this Agreement.

25. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

26. REFERENCE TO LAWS AND RULES:

In the event any law, regulation, policy, procedure, standard or contractual obligation referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

27. PROTOCOLS:

Both parties recognize that the inclusion of additional protocols may be required to make this Agreement specific. All such protocols shall be negotiated, determined and agreed upon by Director and CONTRACTOR.

28. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

29. ASSIGNMENT:

Neither party shall delegate its duties or assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by CONTRACTOR in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by the parties to obtain supplies, technical support or professional services.

30. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

31. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CONTRACTOR shall promptly refund, any funds disbursed to CONTRACTOR, which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement.

32. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

33. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

34. STANDARD OF PRACTICE:

CONTRACTOR warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

35. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and COUNTY's contractual obligations under the Mental Health Performance Agreement (State Standard Agreement No. 15-29091) that COUNTY has with DHCS. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

36. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. CONTRACTOR shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to Director.

37. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification, privacy, security and confidentiality requirements set forth herein. CONTRACTOR shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

38. ATTORNEYS' FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

39. SURVIVAL:

The duties and obligations of the parties set forth in Section 3(D) – Compensation Upon Termination, Section 8 – Audit and Retention of Performance Records, Section 10 – Confidential Information, Section 11 – Disclosure and Security Requirements, Section 13 – Preparation and Retention of Medical Records and Documentation and Section 21 – Indemnification shall survive the expiration or termination of this Agreement.

40. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

41. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

42. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

43. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such

party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

44. ENTIRE AGREEMENT:


This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms of this Agreement are hereby ratified.

45. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.


IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

HELIOS HEALTHCARE, LLC – DBA IDYLWOOD CARE CENTER:

By: 
Name: George C. Lytal
Title: President + CEO


Date: 6/10/2016

COUNTY OF HUMBOLDT:

By: 
Mark Lovelace
Chair, Humboldt County Board of Supervisors

Date: 6/29/16

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Risk Management

Date: 6/15/16

LIST OF EXHIBITS:

- Exhibit A – Scope of Services
- Exhibit B – Schedule of Rates

EXHIBIT A
SCOPE OF SERVICES
HELIOS HEALTHCARE, LLC – DBA IDYLWOOD CARE CENTER
FOR FISCAL YEARS 2016-2017 THROUGH 2018-2019

1. SERVICES:

CONTRACTOR will provide transitional, step-down services, twenty-four (24) hours per day, seven (7) days per week, to serious mentally ill adults and Lanterman Petris Short Act conservatees in order to minimize inappropriate or unnecessary acute hospitalization. The transitional services set forth herein are intended to promote independent living and provide COUNTY clients with the skills necessary to succeed in transitioning back into their communities.

- A. Basic Service Level. The parties hereto agree that the minimum level of transitional services provided to COUNTY clients shall comply with any and all applicable local, state and federal laws, regulations and requirements. The transitional services provided to COUNTY clients pursuant to the terms and conditions of this Agreement shall include without limitation:
1. Provision of personal living quarters in a locked, twenty-four (24) hour skilled nursing facility.
 2. Provision of skilled nursing care in conjunction with specific clinical programming addressing behavioral needs.
 3. Provision of continuous, observation, assessment, supervision and assistance.
 4. Provision of three (3) nutritional meals, and snacks in between meals, on a daily basis, including the preparation of special diets as prescribed by a physician.
 5. Development of client treatment plans, in conjunction with COUNTY staff, that include access to daily rehabilitative activities, utilization of community resources, referral to community based alcohol and other drug treatment programs and mental health services, such as individual and group counseling.
 6. Adherence to County's individualized client plans in order to transition clients to less restrictive levels of care in a timely manner.
 7. Assistance in modifying maladaptive behavior patterns and developing alternative methods of managing life stressors and other daily living skills, including, without limitation, personal hygiene, grooming and household skills, that will enable clients to live in less restrictive, more independent settings.
 8. Assistance, in accessing community resources and services, including, without limitation, transitional programs and work activity and vocational counseling.
 9. Assistance, if needed, in planning, arranging and/or providing transportation to medical, clinical and dental appointments.
 10. Notification, as needed, to appropriate persons and/or agencies regarding client needs.

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- B. Enhanced Service Level. Enhanced services will consist of intensive supervision and unique mental health treatment interventions which will augment the provision of the basic transitional services set forth herein. Enhanced services shall be provided to COUNTY clients who need such augmented supervision and specialized mental health intervention due to specific behavioral and/or medical problems that prevent the individual from receiving treatment and care in a less restrictive environment.
- C. Client Discharge Planning and Coordination. CONTRACTOR shall communicate with COUNTY on a monthly basis, and more frequently as needed, to coordinate plans for discharge of COUNTY clients to less restrictive levels of care. CONTRACTOR agrees to facilitate access to, and utilization of, Health Insurance and Accountability Act compatible web conferencing, video conferencing or telemedicine equipment to enable COUNTY to have a minimum of monthly joint conferences with COUNTY clients, clients' significant others and/or CONTRACTOR's clinicians in order to facilitate discharge planning processes. CONTRACTOR shall be responsible for obtaining informed consents for telemedicine.
- D. Additional Services. Additional services, including, but not limited to, out of county transportation and extraordinary staffing requests, may be negotiated, and included herein through written amendment, on an individual basis.

2. ACCEPTANCE CRITERIA:

The effectiveness of the transitional services provided to COUNTY clients at CONTRACTOR's facility pursuant to the terms and conditions of this Agreement shall be reviewed based on the following: (1) transitioning COUNTY clients to lower levels of care within one hundred eighty (180) days from the date of admission into CONTRACTOR's facility; and (2) maintaining a less than ten percent (10%) re-hospitalization rate within thirty (30) days from the date of admission into CONTRACTOR's facility.

3. REPORTING REQUIREMENTS:

CONTRACTOR agrees to prepare, and submit to COUNTY, performance and psychiatric and medical admission reports in accordance with the requirements set forth herein.

- A. Performance Reports. CONTRACTOR shall provide COUNTY with monthly performance reports, via invoice or supplemental reports, as needed. Performance reports shall include the following information with regard to the prior month:
 - 1. Monthly census, including client names, dates of admission, dates of discharge and number of clients served.
 - 2. Notification and explanation of any placements accepted, denied, and/or discharged by CONTRACTOR.
 - 3. Documentation of any and all basic, enhanced and/or additional services provided pursuant to the terms and conditions of this Agreement.
 - 4. Attendance and/or participation in all programs and activities made available to COUNTY clients pursuant to the terms and conditions of this Agreement.
 - 5. Updates regarding COUNTY clients' treatment plans and activities relating to treatment

- plan accomplishments.
 - 6. Notification of client participation in activities related to Wellness Recovery Action Plans.
 - 7. Documentation of any and all client admissions to psychiatric and medical hospitals.
 - 8. Notification of, and documentation regarding, the number of days any COUNTY clients were placed on the most restrictive level of care.
 - 9. Notification of any current or anticipated difficulty in providing services, or if the services do not appear to result in the anticipated benefit to the client.
- B. Submission of Performance Reports. Performance Reports shall be submitted by the tenth (10th) day of the month following the month in which services were rendered. Performance Reports submitted by CONTRACTOR shall be sent to COUNTY at the following address:

COUNTY: Humboldt County DHHS – Mental Health
 Attention: Supervising Mental Health Clinician
 720 Wood St.
 Eureka, California 95501

- C. Submission of Psychiatric and Medical Admission Reports. CONTRACTOR shall notify COUNTY within twenty-four (24) hours after the admission of a COUNTY client to a psychiatric or medical hospital. CONTRACTOR shall notify COUNTY as soon as possible if there is a change in service level that requires either enhanced services or acute psychiatric hospitalization.
- D. Additional Reporting. The parties hereby acknowledge and understand that additional reporting may be necessary on a weekly, monthly and/or quarterly basis.

4. PLACE OF PERFORMANCE:

CONTRACTOR will provide the transitional services set forth herein at its skilled nursing facility located at 1002 West Fremont Avenue, Sunnyvale, California 95798.

5. COUNTY RESPONSIBILITIES:

- A. Comprehensive Community Treatment Team Lead. COUNTY shall designate a Comprehensive Community Treatment Team Lead who shall be responsible for maintaining weekly contact with CONTRACTOR's staff.
- B. Acute Psychiatric Hospitalization. In the event acute psychiatric hospitalization of a COUNTY client is necessary, COUNTY agrees to place such client at COUNTY's Psychiatric Health Facility, Sempervirens, if appropriate. COUNTY and CONTRACTOR hereby agree to work cooperatively to minimize the length of acute psychiatric hospitalizations of COUNTY clients. Disposition will be made on a case-by-case basis.

EXHIBIT B
SCHEDULE OF RATES
HELIOS HEALTHCARE, LLC – DBA IDYLWOOD CARE CENTER
FOR FISCAL YEARS 2016-2017 THROUGH 2018-2019

CONTRACTOR shall submit requests for payment on a monthly basis for days of service provided within the Idylwood Care Center, a skilled nursing facility. COUNTY shall compensate CONTRACTOR for the transitional services provided pursuant to the terms and conditions of this Agreement based on the maximum rates set forth herein.

1. RATE OF COMPENSATION:

COUNTY and CONTRACTOR agree to the following rates as of July 1, 2016.

- Neuro-Behav-Locked: \$124.00 per day
- Neuro-Behav-Locked: \$150.00 per day
- Conversion (requires private room) \$270.20 per day

2. RATE INCREASES:

In special situations CONTRACTOR may require an adjustment to the daily rates set forth herein based upon acuity, medical complexity and/or behavior problems requiring staff interventions beyond typical staff to client ratios.

3. EXCLUDED SERVICES:

Physician services, pharmacy and other ancillary medical services not included in the daily rates set forth herein and are separately billable in accordance with Title 22 of the California Code of Regulations Section 51511(c).