

AGREEMENT FOR JAIL BASED COMPETENCY TREATMENT SERVICES
at Humboldt County, California
Effective July 1, 2020 through June 30, 2022

This Agreement entered into this 1st day of July, 2020, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and California Forensic Medical Group, a California corporation, hereinafter referred to as "CONTRACTOR," is made upon the following considerations:

WHEREAS, COUNTY has entered into an agreement, attached hereto as "Exhibit C" and incorporated herein, with the State of California, Department of State Hospitals ("DSH"), Agreement Number 19-79013-000, for administration of a Jail Based Competency Treatment ("JBCT") program for the provision of restoration of competency to certain felony patient inmates deemed incompetent to stand trial ("IST") under Penal Code section 1370;

WHEREAS, CONTRACTOR is a qualified inmate medical services provider and has agreed to provide services to assist in this JBCT program and venture as outlined below; and

WHEREAS, COUNTY and CONTRACTOR wish to enter into this Agreement, subject to written approval by DSH, to provide a full and complete statement of their responsibilities in connection with this program and venture during the term of this Agreement.

NOW, THEREFORE, in consideration of the covenants and promises hereinafter made, the Parties hereto agree as follows:

1. DESCRIPTION OF SERVICES:

CONTRACTOR agrees to furnish the services described in Exhibit A – Scope of Work, which is attached hereto and incorporated herein by reference. In providing such services and assistance, CONTRACTOR agrees to fully cooperate with the Humboldt County Sheriff's Office or designee thereof, hereinafter referred to as "Sheriff".

2. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect from July 1, 2020 at 12:01 A.M. through June 30, 2022 at 11:59 P.M., 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. This Agreement may be terminated by COUNTY or CONTRACTOR without cause upon thirty (30) days' advance written notice. Such notice shall state the effective date of the termination.
- 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 terminated, 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. 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 such termination. However, this provision shall not limit or reduce any damages owing to COUNTY resulting from a breach of this Agreement by CONTRACTOR.

4. **COMPENSATION:**

The maximum amount payable by COUNTY under this Agreement is One-Million One Hundred Thirty-Six Thousand Eight Hundred Fifty-Seven Dollars (\$1,136,857.00). CONTRACTOR agrees to perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. The rates and costs shall be as set forth in Exhibit 2 – Schedule of Rates, which is attached hereto and incorporated herein by reference.

5. **PAYMENT:**

CONTRACTOR shall submit to COUNTY monthly invoices itemizing all work completed. Invoices shall be in a format approved by, and shall include backup documentation as specified by, Sheriff and the Humboldt County Auditor-Controller. CONTRACTOR shall submit a final undisputed invoice for payment no more than thirty (30) days following the expiration or termination date of this Agreement. Payment for work performed will be made within thirty (30) days after the receipt of approved invoices.

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 Sheriff's Office
Attention: Sheriff
826 4th Street
Eureka, CA 95501

Humboldt County Probation Department
Attention: Chief Probation Officer
2002 Harrison Avenue
Eureka, CA 95501

Humboldt County DHHS – Public Health
Attention: Public Health Director
529 I Street
Eureka, CA 95501

CONTRACTOR: California Forensic Medical Group
Attention: Chief Financial Officer
2511 Garden Road Suite A160
Monterey, CA 93940

7. **REPORTS:**

CONTRACTOR agrees to provide COUNTY with any and all reports, which may be required by local, state 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.

8. **RECORD RETENTION AND INSPECTION:**

- A. **Maintenance and Preservation of Records.** CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under 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 therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work performed.
- B. **Inspection of Records.** Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONTRACTOR, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. CONTRACTOR hereby agrees to make such records available during normal business hours to inspection, audit and reproduction by any duly authorized agents of the State of California or COUNTY. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or COUNTY. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this

Agreement, including, but not limited to, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

9. **MONITORING:**

CONTRACTOR agrees that COUNTY has 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. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by CONTRACTOR pursuant to the terms of this Agreement.

10. **CONFIDENTIAL INFORMATION:**

- A. Disclosure of Confidential Information. In the performance of this Agreement, CONTRACTOR may receive information that is confidential under local, state or federal law.

CONTRACTOR hereby agrees to protect all confidential information 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 and 10850; California Health & Safety Code Sections 1280.15 and 130203; the California Confidentiality of Medical Information Act ("CMIA"); the federal Health Information Technology for Economic and Clinical Health Act, ("HITECH Act"); the federal Health Insurance 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, all as may be amended from time to time.

Notwithstanding anything to the contrary contained herein, nothing shall be construed to require Contractor to act or refrain from acting in any way that might jeopardize the trade secret, proprietary, or confidential status of, or Contractor's ownership interest in, its information.

- B. Continuing Compliance with Confidentiality Laws. The parties acknowledge that federal and state confidentiality laws 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 or regulations.

11. 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 becomes a Nuclear Weapons CONTRACTOR.

12. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONTRACTOR shall not 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 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, or any other classifications protected by local, state and federal laws and regulations. Nothing herein shall be construed to require employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONTRACTOR further assures that it will abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, California Welfare and Institutions Code Section 10000, CDSS MPP Division 21, United States Executive Order 11246, as amended, and any other applicable local, state and federal laws and regulations. Practices in hiring, compensation, benefits and firing are among the employment practices subject to this requirement.

13. DRUG-FREE WORKPLACE:

By signing this Agreement, CONTRACTOR hereby certifies that CONTRACTOR 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. 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 all of 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 hereunder will:
 - 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. Noncompliance. Failure to comply with these 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.

14. INDEMNIFICATION:

CONTRACTOR shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney fees and other costs of litigation, arising out of, or in connection with, CONTRACTOR's performance of, or failure to comply with, any of the obligations contained herein, except such loss or damage which was caused by the negligence or willful misconduct of COUNTY:

15. 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 period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Bests 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) 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 of not less than One Million Dollars (\$1,000,000) 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 Office 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) 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 Two Million Dollars (\$2,000,000) for each occurrence (Four Million Dollars (\$4,000,000) 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 "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) shall be disclosed to 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.

- 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
Attn: Risk Management 825 5th Street, Room 131
Eureka, California 95501

CONTRACTOR: California Forensic Medical Group
Attention: Chief Financial Officer
2511 Garden Road Suite A160
Monterey, CA 93940

16. 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 agent, 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.

17. HIPAA COVERED ENTITY REQUIREMENTS:

Each party hereto represents itself to be a "covered entity," as that term is defined by HIPAA, and agrees to use and disclose any and all confidential information concerning persons receiving services pursuant to this Agreement in accordance with any and all applicable laws, regulations and standards. COUNTY and CONTRACTOR acknowledge that the exchange of such confidential information shall only be for the purposes of treatment, payment and health care operations.

18. CONTRACT BETWEEN COUNTY AND DSH

CONTRACTOR has reviewed the agreement between COUNTY and DSH, attached hereto as Exhibit C and incorporated herein, and agrees to comply with of the terms and conditions therein applicable to CONTRACTOR pursuant to this Agreement, including those contained in all exhibits and attachments. Nothing in this Agreement shall create a contractual relationship between DSH and CONTRACTOR.

19. COMPLIANCE WITH LAWS:

CONTRACTOR agrees to comply with all applicable local, state and federal laws and regulations, including, but not limited to, the Americans with Disabilities Act. CONTRACTOR further agrees to comply with all applicable local, state and federal licensure and certification requirements. CONTRACTOR shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws which in any way affect the conduct of the work of this Agreement, If any conflict arises between provisions of the plans and specifications and any such law above referred to then CONTRACTOR shall immediately notify COUNTY in writing.

20. 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.

21. ASSIGNMENT:

CONTRACTOR shall not delegate its duties or assign its rights hereunder, either in whole or in part, without COUNTY'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 CONTRACTOR to obtain supplies, technical support or professional services.

22. 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 assigns.

23. 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 any 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.

24. 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.

25. AMENDMENT:

No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

26. STANDARD OF PRACTICE:

CONTRACTOR warrants that CONTRACTOR 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.

27. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information, and reports concerning the subject matter of this Agreement prepared and/or submitted by CONTRACTOR in fulfillment of its duties hereunder shall become the property of DSH. However, CONTRACTOR may retain copies of such documents and information for its records. In the event of termination of this Agreement, for any reason whatsoever, CONTRACTOR shall promptly turn over all such information, writings and documents to COUNTY and DSH without exception or reservation.

28. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. 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.

29. 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 (television, radio, newspapers and internet). CONTRACTOR shall inform COUNTY of all requests for interviews by media related to this Agreement before such interviews take place; and COUNTY is entitled to have a representative present at such interviews. All notices required by this provision shall be given to Sheriff.

30. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be delivered hereunder. Any and all subcontracts will be subject to all applicable provisions of this Agreement. 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.

31. 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.

32. 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.

33. 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, but not be limited to, 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.

34. 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 of the parties.

35. 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.

[Signatures on Following Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

CALIFORNIA FORENSIC MEDICAL GROUP

By:  Date: May 13, 2020
Raymond Herr, M.D.
President

By:  Date: May 13, 2020
Cindy Watson
Vice President

COUNTY OF HUMBOLDT

By:  Date: 6/23/2020
Estelle Fennel
Chair Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By:  Date: 5/27/2020
Risk Analyst

EXHIBIT A
SCOPE OF WORK

1. SUMMARY OF WORK TO BE PERFORMED.

- A. Contractor shall administer a Jail-Based Competency Treatment (JBCT) program for the provision of restoration of competency treatment services for inmates with felonies incarcerated at the Humboldt County Correctional Facility (HCCF) and found to be incompetent to stand trial (IST) under California Penal Code section 1370 (hereinafter, "JBCT Patient Inmates"). The services shall be performed at the Humboldt County Correctional Facility located at 826 4th Street, Eureka, CA 95501. The services shall be provided 24 hours per day, seven days per week, including all state holidays.

2. CONTRACTOR RESPONSIBILITIES.

- A. Contractor shall administer a JBCT program within a designated area of the HCCF and provide restoration of competency treatment services that are intended to restore trial competency for JBCT Patient Inmates incarcerated at the HCCF and committed to the Department of State Hospitals (DSH) under California Penal Code section 1370. The restoration of competency treatment services shall adhere to the program outlines described in Section 3, Program Elements, below.
- B. Contractor shall conduct a preliminary evaluation of each potential JBCT Patient Inmate by reviewing the medical and mental health records of each prospective JBCT Patient inmate prior to admission into the JBCT program.
- i. Contractor shall ensure that priority for admissions to the JBCT program shall be based on commitment date, regardless of the county of commitment, unless an exception is made based on one of the factors listed in the California Code of Regulations (CCR), Title 9, Section 4710. In the event multiple felony IST defendants have the same commitment date, admission shall be scheduled based on the availability of the County to transport the defendants.
- ii. Upon JBCT Patient Inmate's admission to the JBCT program, Contractor shall conduct a more thorough assessment in accordance with Section 3, Program Elements, below.
- C. Contractor shall conduct a preliminary evaluation of each potential JBCT Patient Inmate by performing, at a minimum, a review of the medical and mental health records of each prospective Patient Inmate, prior to admission into the JBCT program.
- i. Contractor shall ensure that priority for admissions to the JBCT program shall be based on commitment date, regardless of the county of commitment, unless an exception is made based on one of the factors listed in California Code of Regulations (CCR), Title 9, Section 4710. In the event multiple felony IST defendants have the same commitment date, admission shall be scheduled based on the availability of the committing county to transport the defendants.
- ii. Upon admission into the JBCT program, Contractor shall ensure that a more thorough assessment is conducted as indicated in Section 3, Program Elements, below.

- D. Contractor shall provide services for a total of two single and two double bed cells to Patient Inmates located in the JBCT designated area. Should the need to increase the number of beds for the JBCT program, Contractor and County shall negotiate an increase in hours and compensation accordingly.
- E. Upon the first Patient Inmate admission, Patient Inmates shall be limited to felony Patient Inmates as committed by County for a period of six months. After six months, Patient Inmates shall also include male felony Patient Inmates committed and referred by Del Norte County.
- F. Contractor retains the right to exclude specific individual Patient Inmates from the JBCT designated for classification reasons at the time of assignment or at any point during the Patient Inmate's incarceration at the HCCF.
- G. Should Contractor determine, based on clinical considerations, patient history, or other factors, that a current or potential Patient Inmate is, or likely shall be, violent and a significant danger to others participating in the JBCT program, Contractor shall inform the County and DSH Contract Manager immediately in writing, and by phone. Contractor agrees that the decision to remove such a Patient Inmate from the JBCT program is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission. In the event a Patient Inmate is removed from the JBCT program, the DSH shall arrange to have such Patient Inmate admitted to a state hospital forthwith as is permitted under the admission requirements set forth in CCR, Title 9, sections 4700, et seq. Contractor shall continue to treat the Patient Inmate in the JBCT program until such arrangements are made. Contractor shall notify the committing county of the Patient Inmate's removal from the JBCT program upon the Patient Inmate's admission to the state hospital.
- H. Contractor shall provide for the care, confinement, and security of the Patient Inmates in accordance with all federal and state laws, standards, regulations, policies, procedures, and court orders applicable to the HCCF.
- I. Contractor's custody staff assigned to the JBCT program shall receive Enhanced Mentally Ill Offender or Crisis Intervention Training (CIT) provided by Contractor and shall participate in the JBCT program treatment team meetings.
- J. Upon Restoration of Competency, Contractor shall assist county with coordinating with the restored Patient Inmate's committing counties' behavioral health programs for the continued mental health care, crisis intervention, ongoing counseling and care, and psychotropic medication compliance for the Patient Inmates restored to competence and transferred from the JBCT program.
- K. Contractor and its subcontractors shall procure and keep in full force and effect during the term of this Agreement all permits, registrations, and licenses necessary to accomplish the work specified in this Agreement and shall give all notices necessary and incident to the lawful prosecution of the work. Contractor shall provide proof of any such license(s), permits(s), and certificate(s) upon request by the DSH.
- L. Contractor shall provide services as outlined in this Agreement. Contractor shall be responsible to fulfill the requirements of this Agreement and shall incur expenses at its own risk and invest a sufficient amount of time and capital to fulfill the obligations as contained herein.

M. Contractor and its subcontractors shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then Contractor shall immediately notify the County in writing.

3. PROGRAM ELEMENTS.

A. Referral Document Collection Prior to Admission.

Contractor shall coordinate with the committing court to ensure all required documents listed under Penal Code section 1370, subdivision (a)(3) are provided by the court for all Patient Inmates upon admission. Contractor shall provide copies of these documents to the DSH immediately upon request, no later than 24 hours from receipt of the request. Once the committing county's felony IST referrals are being managed by the DSH Patient Management Unit (PMU), the PMU shall coordinate with the committing court and provide all required documents to Contractor.

B. Referrals Determined to be Not Suitable for Admission.

Should Contractor determine, based on clinical or custodial considerations, that a felony IST referral is not suitable for admission into the JBCT program, Contractor shall inform the DSH Contract Manager and the PMU immediately in writing or by phone. Immediately upon making this determination, Contractor shall provide all required documents listed under Penal Code section 1370, subdivision (a)(3) to the PMU no later than 24 hours. Once the committing county's felony IST referrals are being managed by the PMU, the transmission of these documents will no longer be required.

C. Removal of Patient Inmates No Longer Clinically Suitable.

- i. Upon admission, Contractor shall assess each Patient Inmate to ascertain if trial competence is likely and medical issues would not pose a barrier to treatment. At the discretion of the DSH Contract Manager, and if requested in writing, Contractor shall review and agree upon new Patient Inmates being forwarded for admission and/or retention into the JBCT program, which may contraindicate fast-track jail treatment.
- ii. Should Contractor determine, based on clinical considerations or other factors, that a Patient Inmate admitted into the JBCT program is no longer clinically suitable for participation in the program, Contractor shall contact the DSH Contract Manager to discuss treatment options. Contractor agrees that the decision to remove such a Patient Inmate from the JBCT program is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission.
- iii. Should Contractor and the DSH determine a Patient Inmate should be removed from the JBCT program, Contractor shall continue to provide treatment until arrangements are made to admit the Patient Inmate to a state hospital. Within seven days of making this determination, Contractor shall also provide the following additional documents to the PMU, including but not limited to:
 - 1) Transfer Notification Letter;
 - 2) Court Reports, if due or submitted;

- 3) 90-Day Progress Reports, if due or submitted;
- 4) Psychiatry Intake Assessment;
- 5) The three most recent Psychiatry Progress Notes;
- 6) Psychology Intake Assessment;
- 7) 30-Day psychologist Competency Reassessments;
- 8) Social Work/Clinician Intake Assessment;
- 9) Nursing Intake Assessment;
- 10) Informed Consent;
- 11) Medication Orders;
- 12) Laboratory Results, if any; and
- 13) Discharge Summary.

D. Psychological Assessment Protocol.

- i. Contractor shall administer a battery of individualized psychological assessments and testing upon admission. Standardized and semi-structured psychological tests shall be utilized to complete a preliminary assessment of the Patient Inmate's current functioning, likelihood of malingering, and current competency to stand trial. Impediments to trial competency shall be ascertained through the use of preliminary assessment instruments, including but not limited to:
 - 1) Clinical Interview. The psychologist shall obtain information pertaining to the Patient Inmate's psychosocial, psychiatric, and legal history as well as barriers to competency. *The Mental Status Exam (MSE)* shall also be included in the interview;
 - 2) Assessment of Malingering (as clinically indicated). *Miller Forensic Assessment of Symptoms (M-FAST)*;
 - 3) Assessment of Trial Competence. *Evaluation of Competency to Stand Trial-Revised (ECSTR)*, the *MacArthur Competency Assessment Tool – Criminal Adjudication (MacCAT-CA)*, and/or the *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*; and
 - 4) Severity of Psychiatric Symptoms. *Brief Psychiatric Rating Scale (BPRS)*.
- ii. Contractor shall administer additional malingering-specific assessments, integrating additional observable data reported by various disciplines on a 24/7 basis if preliminary assessment suggests the presence of malingering. If the screening instruments administered during the preliminary assessment raise suspicion that the primary barrier to trial competency is malingering, the following may also be utilized, including but not limited to:
 - 1) *Structured Interview of Reported Symptoms – Second Edition (SIRS-2)*;
 - 2) *Test of Memory Malingering (TOMM)*;
 - 3) *Georgia Atypical Presentation (GAP)*;
 - 4) *Structured Inventory of Malingered Symptomatology (SIMS)*; or
 - 5) *Inventory of Legal Knowledge (ILK)*.
- iii. Contractor may administer further cognitive assessments based on the specific cognitive deficit identified during the preliminary assessment. If the screening instruments administered during the preliminary assessment raise suspicion that the primary barrier to trial competency is cognitive deficits, the following may also be utilized, including but not limited to:
 - 1) *Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)*;

- 2) *Wide Range Achievement Test 4 (WRAT4)*; or
 - 3) *Montreal Cognitive Assessment (MoCA)*.
- iv. Contractor may administer additional instruments assessing personality to complete further assessment of psychological functioning, including but not limited to:
 - 1) *Personality Assessment Inventory (PAI)*; or
 - 2) *Minnesota Multiphasic Personality Inventory-2 (MMPI-2)*.
 - v. Contractor shall administer follow-up assessments of the Patient Inmate's current competency to stand trial at 30-day intervals or more frequently as needed using any of the following, including but not limited to:
 - 1) *Evaluation of Competency to Stand Trial-Revised (ECST-R)*;
 - 2) *Revised Competency Assessment Instrument (R-CAI)*;
 - 3) *MacArthur Competency Assessment Tool – Criminal Adjudication (MacCAT-CA)*; or
 - 4) *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*.

E. Individualized Treatment Program.

- i. Contractor shall identify specific deficits that result in incompetence to stand trial upon admission. Each deficit shall be listed on the individualized treatment plan and shall be targeted in the Patient Inmate's treatment. Contractor shall use current standardized competency assessment tools, such as the MacArthur Competency Assessment Tool, after considering the totality of clinical and forensic circumstances.
- ii. Contractor shall provide an individualized restoration program according to the treatment approach subscribed to by the individual treatment teams and indicated by the Patient Inmate's psychiatric condition, level of functioning, and legal context.
- iii. Contractor shall tailor individualized treatment regimens to the Patient Inmate's specific barrier(s) to trial competency. Deficits identified in the competency assessment upon admission to the JBCT program shall be listed in the individual treatment plan and addressed by specific treatment interventions.
- iv. Contractor shall conduct case conferences weekly or as needed to reassess Patient Inmates' progress toward restoration of competence to allow the treatment teams to measure whether their treatment interventions are working, and whether additional treatment elements need to be incorporated into Patient Inmates' treatment plans.

F. Multi-modal, Experiential Competency Restoration Educational Experience and Components.

- i. Contractor shall provide educational materials presented in multiple learning formats by multiple staff to each Patient Inmate, e.g., a simple lecture format may be replaced with learning experiences involving discussion, reading, video, and experiential methods of instruction, such as role-playing or mock trial.
- ii. Contractor shall address the following elements in the education modalities of the competency restoration program, including but not limited to:
 - 1) Criminal charges;
 - 2) Severity of charges, namely Felony vs. Misdemeanor;

- 3) Sentencing;
 - 4) Pleas including, Guilty, Not Guilty, Nolo Contendere and Not Guilty by Reason of Insanity;
 - 5) Plea bargaining;
 - 6) Roles of the courtroom personnel;
 - 7) Adversarial nature of trial process;
 - 8) Evaluating evidence;
 - 9) Court room behavior;
 - 10) Assisting counsel in conducting a defense;
 - 11) Probation and Parole; and
 - 12) Individualized instruction as needed.
- iii. Contractor shall provide additional learning experience through increased lecture time, as well as individual instruction to Patient Inmates who are incompetent due to specific knowledge deficits caused by low intelligence, but who may be restored to competence with additional exposure to the educational material.

G. Medication Administration and Consent.

- i. Contractor shall obtain proper authorization (e.g., informed consent for treatment, medication issues) from the Patient Inmates as soon as possible in accordance with professional standards of care and court practices.
- ii. Contractor shall provide strategies to promote and incentivize voluntary psychotropic medication compliance.
- iii. If involuntary psychotropic medication is not ordered by the court at time of commitment of a Patient Inmate to the JBCT program and the treating psychiatrist determines that psychotropic medication has become medically necessary and appropriate, Contractor shall request that the court make an order for the administration of involuntary psychotropic medication.
- iv. Contractor shall administer involuntary psychotropic medication when medically necessary and appropriate upon the issuance of the court order.

H. Suicide Prevention / Adverse Events.

Contractor shall develop a suicide prevention program and assessment procedures that shall include an adverse sentinel event review process. Contractor shall submit written suicide prevention procedures to the DSH Contract Manager for approval prior to activation of the JBCT program and annually thereafter.

I. Patients' Rights / Grievance Process.

Upon admission, Contractor shall provide an orientation and education on the Patient Inmate grievance process for each Patient Inmate. Contractor shall post the Patient Inmate Grievance Process in a visible location in an area commonly used by Patient Inmates.

J. Data Deliverables.

- i. The DSH shall provide a standardized data collection template. Contractor shall complete and submit this data collection to the DSH on a weekly basis with a deadline to be determined by the DSH. The template includes, but is not limited to, the following data elements:

TERM	DEFINITION
Patient Name:	Last and first name of patient
Case Number:	Court assigned case number for each individual court case. It can typically include letters and numbers.
Booking Number:	Number that County Jail issues to an individual (per Forensics)
Gender:	Male or Female
Date of Birth:	Birthdate, Age can be determined using this date
Ethnicity:	Type of social group that has a common national or cultural tradition. <i>Caucasian/White, African American/Black, American Indian/Alaska Native, Asian, Native Hawaiian/ Other Pacific Islander, Hispanic, Other</i>
Language Spoken:	Type of language spoken
Interpretive Services Utilized (YES/NO)	Were interpretive services utilized? Yes or No
Referring County:	County of referral and/or commitment
Commitment Date:	Date of commitment
Packet Received Date:	Date packet received (including incomplete required documents)
Packet Completed Date:	Date packet completed (including all completed required documents)
Reason for Ongoing Pending Status:	Provide a detailed reason why the delay of admission
Screening Evaluation Completed Date:	Date screening evaluation was completed.
Screening Outcome:	Outcome results of patient screened. Accepted or Rejected
Reason for Screening Rejection:	Detail regarding reason for screening rejection. Bypassed/Triaged, Non-Roc, Medication, Substance-Related, Higher Level-of-Care, Other
Admission Date:	Date of admission
Involuntary Medication Order (YES/NO):	Is there a current court-ordered IMO in place? Yes or No
IMO Effective Date:	Date IMO was effective on; this is the same as their 1370 commitment date
Medication Adherence:	Whether patients take their medication as prescribed. Fully Adherent, Intermittently Adherent, Refusing (If applicable to program)
Did I/P Receive Invol. Meds (YES/NO):	Was involuntary medication administered to patient? Yes or No
Date Invol. Meds Initiated:	Date of involuntary medication administered
Disposition of Discharge/Transfer:	Final determination of patient's status. Restored or DSH
Reason for Discharge/Transfer:	Detail regarding reason for patient's discharge or transfer
Date Referred to DSH for Transfer:	Date referred to DSH for transfer
Discharge/Transfer Date:	Date of discharge and/or date of transfer
Discharge/Transfer Location:	Location where patient will be discharged to jail: Atascadero SH, Coalinga SH, Metropolitan SH, Napa SH, Patton SH, Other. Must update notes with specific location
Reason for Delayed Discharge:	Provide a detailed reason why the delay of discharge
Date ROC Certificate Submitted to Court:	Date that ROC certificate was submitted to court
Primary Diagnosis at Admission:	Patient's primary diagnosis at time of admission
Diagnosis at Discharge:	Patient's primary diagnosis at time of discharge
Diagnosis of Malingering (YES/NO):	Did the patient have a malingering diagnosis at any point during their stay in JBCT? Yes or No

- ii. Contractor shall submit daily census reports to the DSH upon the first Patient Inmate admission, unless otherwise requested by the DSH.
- iii. Contractor shall submit a summary performance report within 30 days of the end of the contract term, to include but not be limited to, the information stated above and:
- 1) The total number of individuals restored to competency;
 - 2) The average number of days between program admission and discharge;
 - 3) The total costs of the program by budget category: personnel, operating expenses, administrative expense, custody and housing, and other direct

operating costs as well as overall cost over Patient Inmate treated and the costs for those found to be malingering;

- 4) The cost per cycle of treatment;
- 5) A description of all implementation challenges; and
- 6) Special incident reports and notification to the DSH of emergencies.

K. Reporting Requirements.

- i. Contractor shall submit a written report to the court, the community program director of the county or region of commitment, and the DSH Contract Manager concerning the Patient Inmate's progress toward recovery of trial competence within 90 days of a commitment. The report shall include a description of any antipsychotic medication administered to the Patient Inmate and its effects and side effects, including effects on the Patient Inmate's appearance or behavior that would affect the Patient Inmate's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner.
- ii. Contractor shall verbally report any escape within 24 hours to the court that made the commitment, the prosecutor in the case, the Department of Justice, and the DSH Contract Manager, with a written report to follow within five business days.
- iii. Contractor shall report via phone or email to the DSH Contract Manager when a Patient Inmate who is currently receiving treatment in the JBCT program is involved in a Serious Incident. "Serious Incidents" shall include, but not be limited to, causing serious harm to self or others and committing a new felony offense. Such reporting shall take place within 24 hours of the Serious Incident. Contractor shall respond to Serious Incidents and law enforcement issues, with coverage 24 hours per day, seven days a week, and with the capacity to arrange for or provide emergency transportation of Patient Inmates. Contractor shall maintain a Serious Incident file that is separate from the Patient Inmate record.
- iv. Contractor shall file a certificate of restoration with the court that made the commitment when the Program Director or their designee determines that the Patient Inmate has regained trial competence.

4. TREATMENT PROTOCOL.

- A. JBCT is an intensive, milieu-based treatment program that quickly facilitates competency through a combination of group and individual therapy.
- B. Group therapy is central to the restoration process, and Contractor shall provide treatment daily to Patient Inmates. Group content should include one of the four group treatment domains: competency education, understanding and management of mental illness, physical exercise, and mental/social stimulation. Many group topics can be assimilated into the groupings, e.g., mock trial, music-based competency treatment, etc.
- C. Contractor shall provide individual sessions per day to each Patient Inmate. Individual sessions may be used to check-in with Patient Inmates and/or discuss key legal elements of the individual's case that may be too sensitive for group discussion. Specific competency issues can best be addressed individually, e.g., a Patient Inmate understands court proceedings but struggles to apply the knowledge to their individual case.

D. Contractor's psychiatrist shall see each Patient Inmate weekly. A psychiatric assessment is a component of the admission process, and more frequent appointments shall be available as needed.

E. Together on a weekly basis, the multi-disciplinary treatment team shall review:

- i. Progress of all Patient Inmates admitted within 30 days,
- ii. At subsequent 14-day intervals thereafter, and
- iii. When a Patient Inmate is under consideration for discharge.

The multi-disciplinary treatment team shall be responsible for providing the committing court progress reports pursuant to Penal Code section 1370 subdivision (b)(1).

EXHIBIT B
PAYMENT PROVISIONS

Humboldt County Contract Period: July 1, 2020 through June 30, 2022 6 Bed JBCT Program			
Number of Beds	Daily Rate (Per Bed)	FY 2020-21 12-Month Total (365 Days)	FY 2021-22 12-Month Total (365 Days)
6	\$252.65	\$553,303.50	\$553,303.50

Plus One-Time Startup Costs:	\$30,250	
Fiscal Year Totals:	\$583,553.50	\$553,303.50
Total Contract Value:	\$1,136,857.00	

EXHIBIT C
Agreement between DSH and COUNTY



COUNTY OF HUMBOLDT

For the meeting of: 4/28/2020

File #: 20-108

To: Board of Supervisors

From: Sheriff

Agenda Section: Consent

SUBJECT:

Approval of State Standard Agreement Between the Humboldt County Correctional Facility (HCCF) and the Department of State Hospitals (DSH) and Supplemental Budget for 1100-243200 Jail Based Competency Program (4/5 Vote Required)

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the State Standard Agreement between the HCCF and DSH;
2. Authorize the Chair of the Board to sign three original copies of the contract (Attachment 1);
3. Authorize the Sheriff, Correctional Captain, or Deputy Director of Sheriff's Administration, to sign all amendments, extensions, revisions or termination of the contract;
4. Authorize the Sheriff, Correctional Captain, or Deputy Director of Sheriff's Administration, to sign all 4 associated forms with the contract. (Attachments 3-6)
5. Direct the Clerk of the Board to return the signed contracts to HCCF, Attn: Captain Duane Christian; and
6. Approve the Supplemental Budget for FY2019-20 for 1100-243200 Jail Based Competency Program start-up costs (Attachment 7) (4/5 vote required).

SOURCE OF FUNDING:

Department of State Hospitals

DISCUSSION:

The California state mental health hospital system is overcrowded. This causes inmates who have been deemed "incompetent to stand trial" to be placed on long waiting lists for a bed in the state hospital to restore their competence. The wait is sometimes in excess of 4-6 months. During the wait period their mental health condition may deteriorate because they are not currently able to get the proper treatment at HCCF. To deal with this overcrowding issue the Department of State Hospitals is funding local Jail Based Competency Programs (JBCT) where inmates can be restored to competency without waiting for a state hospital bed. Several localized JBCT programs have been set-up with great success in various counties around the state.

Establishing a JBCT program in Humboldt would allow inmates, who are deemed incompetent and meet the criteria for the local JBCT, to be treated much faster. In most cases inmates would be restored to competence within 3-4 months versus waiting 4-6 months to get to a state hospital incompetency program and then another 3-4 months to regain competence. This shortened period of time will be a benefit to the inmates where they can get the care they need to regain competency. The shortened period of time will also be a relief to the court system by allowing these cases to proceed more swiftly rather than being backlogged.

In order to establish a JBCT in Humboldt County, HCCF must contract with the Department of State Hospitals first and then subcontract with Wellpath to provide the mental health services. HCCF has already received a commitment from Wellpath that they are prepared to enter into contract to provide these services. (Letter of Intent attached as Attachment 2). Based on historical data and available space, DSH and HCCF have agreed to allocate six beds for the program.

FINANCIAL IMPACT:

DSH will fully fund all new costs for the program and help offset existing facility costs. DSH will pay HCCF \$418.64 per day per bed for a total of \$2,511.84/day for the six allocated beds. This totals \$916,822/annually. In addition, DSH will provide one-time start-up program costs not to exceed \$60,500 for a two-year contract total of \$1,894,143.

HCCF is requesting a supplemental budget for the one-time start-up costs in the amount of \$60,500 for Fiscal Year (FY) 2019-20 (Attachment 7). HCCF is aiming for a program start date of July 1, 2020 and has submitted the FY 2020-21 budget to include the program revenue of \$916,822, funding for 1.0 full-time equivalent (FTE) Correctional Deputy for \$88,915, professional services to Wellpath in the amount of \$553,297, and miscellaneous program costs of \$51,280; leaving \$223,330 in revenue to help offset other HCCF operating costs.

There is no general fund request for this program.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by seeking outside funding sources to benefit Humboldt County needs.

OTHER AGENCY INVOLVEMENT:

Department of State Hospitals
Wellpath

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors may choose not to authorize the Sheriff or designee enter into the attached negotiated contract however, this is not recommended because it would cause those inmates who have been deemed incompetent to stand trial to wait several months waiting on a bed at a state hospital for a competency restoration program.

ATTACHMENTS:

STANDARD AGREEMENT

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER

19-79013-000

PURCHASING AUTHORITY NUMBER (if Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTOR NAME

County of Humboldt

2. The term of this Agreement is:

START DATE

May 1, 2020

THROUGH END DATE

June 30, 2022

3. The maximum amount of this Agreement is:

\$1,894,143.00

One Million Eight Hundred Ninety Four Thousand One Hundred Forty Three Dollars and Zero Cents

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Scope of Work	7
Exhibit A	Attachment 1, Program Elements	9
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit B-1	Sample Invoice	1
Exhibit C *	General Terms and Conditions (GTC 04/2017) as revised	4
Exhibit D	Special Terms and Conditions	9
Exhibit E	Confidentiality and Information Security Provisions (HIPAA Business Associate Agreement)	9

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

County of Humboldt

CONTRACTOR BUSINESS ADDRESS

825 5th Street, RM 112

CITY

Eureka

STATE

CA

ZIP

95501

PRINTED NAME OF PERSON SIGNING

Estelle Fennel



TITLE

Chair, Board of Supervisors

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

4/28/2020

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
STANDARD AGREEMENT
STD 213 (Rev. 03/2019)

AGREEMENT NUMBER
19-79013-000

PURCHASING AUTHORITY NUMBER (If Applicable)

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of State Hospitals

CONTRACTING AGENCY ADDRESS

1600 9th Street, Room 101

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Tiffany Ladd.

TITLE

ABSO Unit Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

EXHIBIT A
SCOPE OF WORK

1. CONTRACTED PARTIES:

A. The County of Humboldt and/or their authorized designee, hereafter referred to as Contractor, agrees to provide services (as defined in Section 6) to the Department of State Hospitals (DSH) pursuant to the terms and conditions of this Agreement.

2. SERVICE LOCATION:

A. The services shall be performed at the Humboldt County Correctional Facility located at 826 4th Street, Eureka, California.

3. SERVICE HOURS:

A. The services shall be provided 24 hours per day, seven days per week, including all State holidays.

4. PROJECT REPRESENTATIVES:

A. The project representatives during the term of this Agreement shall be:

DSH Contract Manager:		DSH Administrative Contact:	
Section/Unit: Forensic Services Division.		Section/Unit: Forensic Services Division	
Attention: Melanie Scott, Psy.D. Assistant Chief Psychologist		Attention: Sarah Turner Program Adviser	
Address: 1600 9 th Street, Room 410 Sacramento, CA 95814		Address: 1600 9 th Street, Room 410 Sacramento, CA 95814	
Phone: (916) 616-5703	Fax: (916) 651-1168	Phone: (916) 651-5599	Fax: (916) 651-1168
Email: Melanie.Scott@dsh.ca.gov		Email: Sarah.Turner@dsh.ca.gov	

Humboldt County Contract Manager:		Humboldt County Sheriff's Contact:	
Section/Unit: Humboldt County Purchasing		Section/Unit: Humboldt County Correctional Facility	
Attention: Bev Pixley Purchasing Coordinator		Attention: Duane Christian Correctional Captain	
Address: 826 5 th Street, RM112 Eureka, CA 95501		Address: 826 4 th Street Eureka, CA 95501	
Phone: 707-268-2541	Fax: 707-445-7299	Phone: 707-441-5105	Fax: 707-441-5109
Email: bpxley@co.humboldt.ca.us		Email: dchristian@co.humboldt.ca.us	

Humboldt County Jail - Medical Contact:	
Section/Unit: Wellpath	
Attention: Karen Edmundson Program Manager	
Address: 826 4 th Street, Eureka, CA 95501	
Phone: 707-445-5926	Fax:
Email: karen.edmundson@wellpath.us	

Either party may make changes to the contact names or information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

5. PROGRAM IMPLEMENTATION FUNDS:

- A. The DSH shall reimburse Contractor for initial program implementation costs incurred under this Agreement. The implementation costs shall include, but are not limited to:
- i. Initial setup of patient rooms as well as treatment and office space;
 - ii. Initial administrative operating expenses and equipment;
 - iii. Development of an operational clinical Policy and Procedure Manual; and
 - iv. Orientation and training time for new staff on clinical operations, policies, and procedures.

6. SUMMARY OF WORK TO BE PERFORMED:

- A. Contractor shall provide access to portions of the HCCF for the purposes of administering a Jail-Based Competency Treatment (JBCT) program for the provision of restoration of competency treatment services for male and female individuals, hereafter referred to as "Patient Inmates," found by the courts to be incompetent to Stand Trial (IST) under Penal Code section 1370. Contractor shall provide restoration of competency treatment services to felony IST Patient Inmates participating in the JBCT program.

7. CONTRACTOR RESPONSIBILITIES:

- A. Contractor shall designate an area within the HCCF dedicated to the administration of a JBCT program and provide restoration of competency treatment services that, either directly or through contract, may restore trial competency for incarcerated felony IST Patient Inmates committed to the DSH under Penal Code section 1370. Contractor shall submit any proposed changes to the JBCT program's designated area to the DSH for its prior written approval.
- B. In providing restoration of competency treatment services, Contractor shall adhere to the program outlines contained in Exhibit A-1, Program Elements.
- C. Contractor shall ensure that a preliminary evaluation of each potential JBCT Patient Inmate is conducted through, at a minimum, a review of the medical and mental health records of each prospective Patient Inmate, prior to admission into the JBCT program.
- i. Contractor shall ensure that priority for admissions to the JBCT program shall be based on commitment date, regardless of the county of commitment, unless an exception is made based on one of the factors listed in California Code of Regulations (CCR), Title 9, Section 4710. In the event multiple felony IST defendants have the same commitment date, admission shall be scheduled based on the availability of the committing county to transport the defendants.
 - ii. Upon admission into the JBCT program, Contractor shall ensure that a more thorough assessment is conducted as indicated in Exhibit A-1, Program Elements.
- D. Contractor shall provide a total of two single and two double bed cells to Patient Inmates located in the JBCT designated area.

Contractor shall be paid in full for the six contracted beds to the per diem rate upon the first Patient Inmate admission, regardless of the number of Patient Inmates admitted.

Beginning 90 days from the first Patient Inmate admission, if, over the course of each quarter period during the term of this Agreement, a 90 percent occupancy rate is not maintained, the DSH and Contractor shall execute an amendment to this Agreement upon jointly developing a plan to reduce the minimum number of beds provided and the budget amount accordingly. This provision shall correspond to the standard quarter periods commencing annually on July 1.

- E. Upon the first Patient Inmate admission, Contractor shall admit Patient Inmates whose committing county is Humboldt for a period of six months. Upon completion of the six-month period of Patient Inmate admissions, Contractor shall also accept male Patient Inmates referred by Del Norte County.
- F. Patient Inmates housed at the HCCF shall remain under the legal and physical custody of Contractor.
- G. Contractor retains the right to exclude specific Individual Patient Inmates from the JBCT designated area for security and classification reasons at the time of assignment or at any point during their incarceration at the HCCF.
- H. Should Contractor determine, based on clinical considerations, patient history, or other factors, that a current or potential Patient Inmate is, or likely shall be, violent and a significant danger to others participating in the JBCT program, Contractor shall inform the DSH Contract Manager immediately in writing, and by phone. Contractor agrees that the decision to remove such a Patient Inmate from the JBCT program is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission. In the event a Patient Inmate is removed from the JBCT program, the DSH shall arrange to have such Patient Inmate admitted to a state hospital forthwith as is permitted under the admission requirements set forth in CCR, Title 9, sections 4700, et seq. Contractor shall continue to treat the Patient Inmate in the JBCT program until such arrangements are made. Contractor shall notify the committing county of the Patient Inmate's removal from the JBCT program upon the Patient Inmate's admission to the state hospital.
- I. Notwithstanding Sections G and H, Contractor shall make every reasonable effort to ensure that the contracted six Allocated Beds provided for treatment services under this Agreement are occupied by Patient Inmates at all times. This includes, but is not limited to, admitting Patient Inmates of increasing levels of acuity.
 - i. The DSH shall make every reasonable effort to ensure adequate Patient Inmate referrals are sent to Contractor throughout the term of this Agreement.
 - ii. By mutual agreement, in writing, and at the request of the DSH, Contractor may admit Patient Inmates into the JBCT program above the six Allocated Beds.
- J. Contractor shall provide for the care, confinement, and security of the Patient Inmates in accordance with all federal and state laws, standards, regulations, policies, procedures, and court orders applicable to the HCCF.
- K. Contractor's custody staff assigned to the JBCT program shall receive Enhanced Mentally Ill Offender or Crisis Intervention Training (CIT) provided by Contractor and shall participate in the JBCT program treatment team meetings.
- L. Responsibilities for Medical Care:

- i. Contractor shall provide all Patient Inmates, regardless of committing county, with the full range of Routine Medical Care available to other Inmates of the HCCF and is financially responsible for such care. Contractor agrees that the cost of all Routine Medical Care is included in the per diem rate charged to the DSH.
 - ii. For the purposes of this Agreement, Routine Medical Care shall be defined as all medical, dental, and mental health care as well as the cost of medical supplies, formulary prescription medications which are provided to Patient Inmates, and restoration of competency treatment services which are provided by the HCCF to Patient Inmates, including prescribed psychotropic medications. Non-formulary prescription medications shall not be provided to Patient Inmates except in conjunction with Non-Routine Medical Care.
 - iii. All medical care provided to Patient Inmates whose committing county is Humboldt shall be considered Routine Medical Care for the purposes of this Agreement.
 - iv. For the purposes of this Agreement, Non-Routine Medical Care shall be defined as major medical operations or surgeries (such as heart transplants); continuation of experimental medication; services that cannot be provided onsite at the HCCF; dialysis services, whether onsite or otherwise; and emergency medical care.
 - v. If a Patient Inmate requires Non-Routine Medical Care, Contractor shall notify the DSH Contract Manager or designee immediately in writing and by phone for pre-approval. For such patients, the DSH further reserves the right to either admit them to a state hospital for treatment or require Contractor to provide Non-Routine Medical Care. In the event the DSH directs Contractor to provide Non-Routine Medical Care, the DSH shall either direct Contractor to instruct the facility providing care to invoice the committing county, or to invoice the DSH directly for the full cost of care provided by submitting the invoice to the attention of the DSH Contract Manager. Should the DSH elect to require Contractor to provide the Non-Routine Medical Care, Contractor shall ensure that the Patient Inmate is provided care at a facility designated by the DSH Contract Manager, in accordance with the preferences of the committing county. Contractor shall notify the committing county of the Patient Inmate's transfer to and from the JBCT program and the designated facility providing care.
 - vi. In the event of an emergency, and for Patient Inmates whose committing county is not Humboldt, Contractor shall proceed immediately with necessary medical treatment. In the event of such an emergency, the DSH shall either direct Contractor to instruct the facility providing care to invoice the committing county, or to invoice the DSH directly for the full cost of care provided by submitting the invoice to the attention of the DSH Contract Manager. In such an event, Contractor shall notify the DSH immediately regarding the nature of the illness or injury as well as the types of treatment provided. Contractor shall make reasonable efforts to ensure that Patient Inmates are treated at facilities preferred by the committing county or otherwise that, once the Patient Inmate is stable enough for transfer, is transferred to such a facility.
- M. For all Routine and Non-Routine Medical Care, Contractor shall be responsible for the security and transportation, including emergency transportation. Contractor agrees that all such costs are included in the per diem rate charged to the DSH.

N. Upon Restoration of Competency:

Contractor shall be responsible for coordinating with the committing counties' behavioral health programs for the continued mental health care, crisis intervention, ongoing counseling and care, and psychotropic medication compliance for the Patient Inmates restored to competence and transferred from the JBCT program.

- O. Contractor and its subcontractors shall procure and keep in full force and effect during the term of this Agreement all permits, registrations, and licenses necessary to accomplish the work specified in this Agreement and shall give all notices necessary and incident to the lawful prosecution of the work. Contractor shall provide proof of any such license(s), permits(s), and certificate(s) upon request by the DSH. Contractor agrees that failure by itself or its subcontractors to provide evidence of licensing, permits, or certifications shall constitute a material breach for which the DSH may terminate this Agreement with cause.
- P. Contractor shall provide services as outlined in this Agreement. Contractor shall be responsible to fulfill the requirements of this Agreement and shall incur expenses at its own risk and invest sufficient amount of time and capital to fulfill the obligations as contained herein.
- Q. Contractor and its subcontractors shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then Contractor shall immediately notify the State in writing.
- R. This Agreement may be canceled at any time by Contractor, in writing, with 50 days' advance notice. The DSH may terminate this Agreement pursuant to section 7 of Exhibit C if Contractor or its subcontractors fails to comply with a federal, state, or local law and the noncompliance, based on the facts and circumstances, would constitute a material breach of this Agreement under California law.

8. DSH RESPONSIBILITIES:

A. Rights of the DSH to Perform Quality Assurance and Financial Audits/Reviews

- i. The DSH may routinely evaluate the work performance of Contractor, Contractor's personnel, subcontractors, or other parties associated with Contractor to determine if the DSH standards and departmental policies and procedures are being maintained. If it is found that any party fails to perform or is physically or mentally incapable of providing services as required by this Agreement, then that party shall not perform services for the DSH.
- ii. The DSH may monitor and evaluate services provided in fulfillment of the requirements of this Agreement, as detailed in Exhibit A. Such monitoring and evaluation may occur on a regular cycle or as deemed necessary by the DSH Contract Manager. The DSH retains sole and absolute discretion in determining any such evaluation schedule.
- iii. Inspections may be conducted by the DSH staff at various times during the Agreement term to check on the quality of work. Payment shall not be provided for services deemed unacceptable by the DSH Contract Manager and/or their designee.
- iv. The DSH may audit and examine Contractor's records and accounts which pertain, directly or indirectly, to services performed under this Agreement. The DSH may hire third parties to

perform the audit and examination, including but not limited to, accountants, consultants, or service providers in the applicable field. Contractor shall cooperate fully with the audits and examinations.

- v. If, as a result of an audit and examination, the DSH is informed of underpayments or overpayments, the DSH shall notify Contractor of the need for payment or reimbursement. Upon receipt of a final audit report, Contractor has 30 days to reimburse any overpayment or to dispute or challenge the report. Contractor and the DSH shall confer and negotiate in good faith with respect to any disputed portion of the final audit report to reach agreement with respect to adjustments, payments, and reimbursements.
- vi. The DSH shall submit its findings to Contractor and establish a deadline for correcting any deficiencies in fulfilling the obligations set forth in this section. Failure by Contractor to timely correct deficiencies shall be reason for termination of services under this Agreement.

9. PERFORMANCE MEASURES:

A. Complete and Timely Provision of Services

- i. **Expectations:** Contractor is expected to provide all services, including any and all required reports, in a timely manner—in accordance with timelines established in this Scope of Work.
- ii. **Penalties:** Should Contractor not provide all services, including any and all required reports in a timely manner, the DSH may choose to terminate this Agreement. Additionally, the DSH may find Contractor to be not responsible in provision of services and evaluate this in future contracting opportunities.

10. AMENDMENTS:

- A. The parties reserve the right to amend this Agreement by extending its term for two additional terms of up to two years each, and to add funding sufficient for these periods at the same rates. This right to amend is in addition to the right to amend for other reasons contained in this Agreement or noted in the solicitation that resulted in this Agreement, if applicable. Any amendment shall be in writing and signed by both parties and be approved by the Department of General Services, if such approval is required.

EXHIBIT A-1
PROGRAM ELEMENTS

1. PROGRAM ELEMENTS

A. Referral Document Collection Prior to Admission

Contractor shall coordinate with the committing court to ensure all required documents listed under Penal Code section 1370, subdivision (a)(3) are provided by the court for all Patient Inmates upon admission. Contractor shall provide copies of these documents to the DSH immediately upon request, no later than 24 hours from receipt of the request. Once the committing county's felony IST referrals are being managed by the DSH Patient Management Unit (PMU), the PMU shall coordinate with the committing court and provide all required documents to Contractor.

B. Referrals Determined to be Not Suitable for Admission

Should Contractor determine, based on clinical or custodial considerations, that a felony IST referral is not suitable for admission into the JBCT program, Contractor shall inform the DSH Contract Manager and the PMU immediately in writing or by phone. Immediately upon making this determination, Contractor shall provide all required documents listed under Penal Code section 1370, subdivision (a)(3) to the PMU no later than 24 hours. Once the committing county's felony IST referrals are being managed by the PMU, the transmission of these documents will no longer be required.

C. Removal of Patient Inmates No Longer Clinically Suitable

- i. Upon admission, Contractor shall assess each Patient Inmate to ascertain if trial competence is likely and medical issues would not pose a barrier to treatment. At the discretion of the DSH Contract Manager, and if requested in writing, Contractor shall review and agree upon new Patient Inmates being forwarded for admission and/or retention into the JBCT program, which may contraindicate fast-track jail treatment.
- ii. Should Contractor determine, based on clinical considerations or other factors, that a Patient Inmate admitted into the JBCT program is no longer clinically suitable for participation in the program, Contractor shall contact the DSH Contract Manager to discuss treatment options. Contractor agrees that the decision to remove such a Patient Inmate from the JBCT program is at the sole discretion of the DSH, and the DSH shall not unreasonably withhold such permission.
- iii. Should Contractor and the DSH determine a Patient Inmate should be removed from the JBCT program, Contractor shall continue to provide treatment until arrangements are made to admit the Patient Inmate to a state hospital. Within seven days of making this determination, Contractor shall also provide the following additional documents to the PMU, including but not limited to:
 - 1) Transfer Notification Letter;
 - 2) Court Reports, if due or submitted;
 - 3) 90-Day Progress Report, if due or submitted;
 - 4) Psychiatry Intake Assessment;
 - 5) The three most recent Psychiatry Progress Notes;
 - 6) Psychology Intake Assessment;
 - 7) 30-Day Psychologist Competency Reassessments;
 - 8) Social Work/Clinician Intake Assessment;

- 9) Nursing Intake Assessment;
- 10) Informed Consent;
- 11) Medication Orders;
- 12) Laboratory Results, if any; and
- 13) Discharge Summary.

D. Psychological Assessment Protocol

- I. Contractor shall administer a battery of individualized psychological assessments and testing upon admission. Standardized and semi-structured psychological tests shall be utilized to complete a preliminary assessment of the Patient Inmate's current functioning, likelihood of malingering, and current competency to stand trial. Impediments to trial competency shall be ascertained through the use of preliminary assessment instruments, including but not limited to:
 - 1) Clinical Interview. The psychologist shall obtain information pertaining to the Patient Inmate's psychosocial, psychiatric, and legal history as well as barriers to competency. The *Mental Status Exam (MSE)* shall also be included in the interview;
 - 2) Assessment of Malingering (as clinically indicated). *Miller Forensic Assessment of Symptoms (M-FAST)*;
 - 3) Assessment of Trial Competence. *Evaluation of Competency to Stand Trial-Revised (ECST-R)*, the *MacArthur Competency Assessment Tool - Criminal Adjudication (MacCAT-CA)*, and/or the *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*; and
 - 4) Severity of Psychiatric Symptoms. *Brief Psychiatric Rating Scale (BPRS)*.
- II. Contractor shall administer additional malingering-specific assessments, integrating additional observable data reported by various disciplines on a 24/7 basis if preliminary assessment suggests the presence of malingering. If the screening instruments administered during the preliminary assessment raise suspicion that the primary barrier to trial competency is malingering, the following may also be utilized, including but not limited to:
 - 1) *Structured Interview of Reported Symptoms - Second Edition (SIRS-2)*;
 - 2) *Test of Memory Malingering (TOMM)*;
 - 3) *Georgia Atypical Presentation (GAP)*;
 - 4) *Structured Inventory of Malingered Symptomatology (SIMS)*; or
 - 5) *Inventory of Legal Knowledge (ILK)*.
- III. Contractor may administer further cognitive assessments based on the specific cognitive deficit identified during the preliminary assessment. If the screening instruments administered during the preliminary assessment raise suspicion that the primary barrier to trial competency is cognitive deficits, the following may also be utilized, including but not limited to:
 - 1) *Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)*;
 - 2) *Wide Range Achievement Test 4 (WRAT4)*; or
 - 3) *Montreal Cognitive Assessment (MoCA)*.
- IV. Contractor may administer additional instruments assessing personality to complete further assessment of psychological functioning, including but not limited to:
 - 1) *Personality Assessment Inventory (PAI)*; or
 - 2) *Minnesota Multiphasic Personality Inventory-2 (MMPI-2)*.
- v. Contractor shall administer follow-up assessments of the Patient Inmate's current competency to stand trial at 30-day intervals or more frequently as needed using any of the following, including but not limited to:

- 1) *Evaluation of Competency to Stand Trial-Revised (ECST-R)*;
- 2) *Revised Competency Assessment Instrument (R-CAI)*;
- 3) *MacArthur Competency Assessment Tool – Criminal Adjudication (MacCAT-CA)*; or
- 4) *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*.

E. Individualized Treatment Program

- I. Contractor shall identify specific deficits that result in incompetence to stand trial upon admission. Each deficit shall be listed on the individualized treatment plan and shall be targeted in the Patient Inmate's treatment. Contractor shall use current standardized competency assessment tools, such as the MacArthur Competency Assessment Tool, after considering the totality of clinical and forensic circumstances.
- II. Contractor shall provide an individualized restoration program according to the treatment approach subscribed to by the individual treatment teams and indicated by the Patient Inmate's psychiatric condition, level of functioning, and legal context.
- III. Contractor shall tailor individualized treatment regimens to the Patient Inmate's specific barrier(s) to trial competency. Deficits identified in the competency assessment upon admission to the JBCJ program shall be listed in the individual treatment plan and addressed by specific treatment interventions.
- IV. Contractor shall conduct case conferences weekly or as needed to reassess Patient Inmates' progress toward restoration of competence to allow the treatment teams to measure whether their treatment interventions are working, and whether additional treatment elements need to be incorporated into Patient Inmates' treatment plans.

F. Multi-modal, Experiential Competency Restoration Educational Experience and Components

- I. Contractor shall provide educational materials presented in multiple learning formats by multiple staff to each Patient Inmate, e.g., a simple lecture format may be replaced with learning experiences involving discussion, reading, video, and experiential methods of instruction, such as role-playing or mock trial.
- II. Contractor shall address the following elements in the education modalities of the competency restoration program, including but not limited to:
 - 1) Criminal charges;
 - 2) Severity of charges, namely Felony vs. Misdemeanor;
 - 3) Sentencing;
 - 4) Pleas including, Guilty, Not Guilty, Nolo Contendere and Not Guilty by Reason of Insanity;
 - 5) Plea bargaining;
 - 6) Roles of the courtroom personnel;
 - 7) Adversarial nature of trial process;
 - 8) Evaluating evidence;
 - 9) Court room behavior;
 - 10) Assisting counsel in conducting a defense;
 - 11) Probation and Parole; and
 - 12) Individualized instruction as needed.

- iii. Contractor shall provide additional learning experience through increased lecture time, as well as individual instruction to Patient Inmates who are incompetent due to specific knowledge deficits caused by low intelligence, but who may be restored to competence with additional exposure to the educational material.

G. Medication Administration and Consent

- i. Contractor shall obtain proper authorization (e.g., informed consent for treatment, medication issues) from the Patient Inmates as soon as possible in accordance with professional standards of care and court practices.
- ii. Contractor shall provide strategies to promote and incentivize voluntary psychotropic medication compliance.
- iii. If involuntary psychotropic medication is not ordered by the court at time of commitment of a Patient Inmate to the JBCT program and the treating psychiatrist determines that psychotropic medication has become medically necessary and appropriate, Contractor shall request that the court make an order for the administration of involuntary psychotropic medication.
- iv. Contractor shall administer involuntary psychotropic medication when medically necessary and appropriate upon the issuance of the court order.

H. Suicide Prevention/Adverse Events

Contractor shall develop a suicide prevention program and assessment procedures that shall include an adverse sentinel event review process. Contractor shall submit written suicide prevention procedures to the DSH Contract Manager for approval prior to activation of the JBCT program and annually thereafter.

I. Patients' Rights/Grievance Process

Upon admission, Contractor shall provide an orientation and education on the Patient Inmate grievance process for each Patient Inmate. Contractor shall post the Patient Inmate Grievance Process in a visible location in an area commonly used by Patient Inmates.

J. Data Deliverables

- i. The DSH shall provide a standardized data collection template. Contractor shall complete and submit this data collection to the DSH on a weekly basis with a deadline to be determined by the DSH. The template includes, but is not limited to, the following data elements:

Term	Definition
Patient Name:	Last and First name of patient
Case Number:	Court assigned case number for each individual court case. It can typically include letters and numbers.
Booking Number:	Number that County Jail Issues to an individual (per Forensics)
Gender:	Male or Female
Date of Birth:	Birthdate, Age can be determined using this date
Ethnicity:	Type of social group that has a common national or cultural tradition. <i>Caucasian/White, African American/Black, American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, Hispanic, Other</i>
Language Spoken:	Type of language spoken
Interpretive Services Utilized (YES/NO):	Was Interpretive services utilized? Yes or No
Referring County:	County of referral and/or commitment
Commitment Date:	Date of Commitment
Packet Received Date:	Date Packet Received (including incomplete required documents)
Packet Completed Date:	Date Packet completed (including all completed required documents)
Reason for Ongoing Pending Status:	Provide a detail reason why the delay of admission
Screening Evaluation Completed Date:	Date Screening Evaluation was completed
Screening Outcome:	Outcome results of patient screened: Accepted or Rejected
Reason for Screening Rejection:	Detail regarding reason for screening rejection. Bypassed/Triaged, Non-Roc, Medication, Substance-Related, Higher Level-of-Care, Other.
Admission Date:	Date of Admission
Involuntary Medication Order (YES/NO):	Is there a current court ordered IMO in place? Yes or No
IMO Effective Date:	Date IMO was effective on, this is the same as their 1370 commitment date
Medication Adherence:	Whether patients take their medications as prescribed. Fully Adherent, Intermittently Adherent, Refusing. (If applicable to program)
Did I/P Receive Invol Meds (YES/NO):	Was involuntary medication administered to patient? Yes or No
Date Invol Meds Initiated:	Date of involuntary medication administered
Disposition of Discharge/Transfer:	Final determination of patients status. Restored or DSH
Reason for Discharge/Transfer:	Detail regarding reason for patients discharge or transfer.
Date Referred to DSH for Transfer:	Date Referred to DSH for Transfer
Discharge/Transfer Date:	Date of Discharge and or Date of Transfer
Discharge/Transfer Location:	Location where patient will be discharged to. Jail, Atascadero SH, Coalinga SH, Metropolitan SH, Napa SH, Patton SH, Other: Must update Notes with Specific location.
Reason for delayed Discharge:	Provide a detail reason why the delay of discharge.
Date ROC Certificate Submitted to Court:	Date that ROC Certificate was submitted to Court
Primary Diagnosis at Admission:	Patients primary Diagnosis at time of Admission
Diagnosis at Discharge:	Patients primary Diagnosis at time of Discharge
Diagnosis of Malingering? (YES/NO):	Did the patient have a Malingering Diagnosis at any point during their stay in JBCT? Yes or No

- II. Contractor shall submit daily census reports to the DSH upon the first Patient Inmate admission, unless otherwise requested by the DSH.
- III. Contractor shall submit a summary performance report within 30 days of the end of the contract term, to include but not be limited to, the information stated above and:
 - 1) The total number of individuals restored to competency;
 - 2) The average number of days between program admission and discharge;
 - 3) The total cost of the program by budget category; personnel, operating expenses, administrative expense, custody and housing, and other direct operating costs as well as overall cost per Patient Inmate treated and the costs for those found to be malingering;
 - 4) The cost per cycle of treatment;
 - 5) A description of all implementation challenges; and
 - 6) Special incident reports and notification to the DSH of emergencies.

K. Reporting Requirements

- I. Contractor shall submit a written report to the court, the community program director of the county or region of commitment, and the DSH Contract Manager concerning the Patient Inmate's progress toward recovery of trial competence within 90 days of a commitment. The report shall include a description of any antipsychotic medication administered to the Patient Inmate and its effects and side effects, including effects on the Patient Inmate's appearance or behavior that would affect the Patient Inmate's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner.
- II. Contractor shall verbally report any escape within 24 hours to the court that made the commitment, the prosecutor in the case, the Department of Justice, and the DSH Contract Manager, with a written report to follow within five business days.
- III. Contractor shall report via phone or email to the DSH Contract Manager when a Patient Inmate who is currently receiving treatment in the JBCT program is involved in a Serious Incident. "Serious Incidents" shall include, but not be limited to, causing serious harm to self or others and committing a new felony offense. Such reporting shall take place within 24 hours of the Serious Incident. Contractor shall respond to Serious Incidents and law enforcement issues, with coverage 24 hours per day, seven days a week, and with the capacity to arrange for or provide emergency transportation of Patient Inmates. Contractor shall maintain a Serious Incident file that is separate from the Patient Inmate record.
- IV. Contractor shall file a certificate of restoration with the court that made the commitment when the Program Director or their designee determines that the Patient Inmate has regained trial competence.

2. TREATMENT PROTOCOL

- A. JBCT is an intensive, milieu-based treatment program that quickly facilitates competency through a combination of group and individual therapy.
- B. Group therapy is central to the restoration process, and Contractor shall provide treatment daily to Patient Inmates. Group content should include one of the four group treatment domains: *competency education, understanding and management of mental illness, physical exercise, and mental/social stimulation*. Many group topics can be assimilated into the groupings, e.g., mock trial, music-based competency treatment, etc.

- C. Contractor shall provide individual sessions per day to each Patient Inmate. Individual sessions may be used to check-in with Patient Inmates and/or discuss key legal elements of the individual's case that may be too sensitive for group discussion. Specific competency issues can best be addressed individually, e.g., a Patient Inmate understands court proceedings but struggles to apply the knowledge to their individual case.
- D. Contractor's psychiatrist shall see each Patient Inmate weekly. A psychiatric assessment is a component of the admission process, and more frequent appointments shall be available as needed.
- E. Together on a weekly basis, the multi-disciplinary treatment team shall review:
 - I. Progress of all Patient Inmates admitted within 30 days,
 - II. At subsequent 14-day intervals thereafter, and
 - III. When a Patient Inmate is under consideration for discharge.

The multi-disciplinary treatment team shall be responsible for providing the committing court progress reports pursuant to Penal Code section 1370 subdivision (b)(1).

3. SAMPLE JBCT GROUP THERAPY SCHEDULE

	<i>Monday</i>	<i>Tuesday</i>	<i>Wednesday</i>	<i>Thursday</i>	<i>Friday</i>
0800-0850	Staff Member 1: Therapeutic Movement	Staff Member 2: Wake-up Activity	Staff Member 2: Wake-up Activity	Staff Member 2: Wake-up Activity	Staff Member 3: JBCT Incentive Store
0900-0950	Staff Member 3: Wellness Education	Staff Member 4: My Life, My Choice	Staff Member 2: Arts & Crafts	Staff Member 4: What Would You Do?	Deputy: Activity of Daily Living Groups
1000-1050	Staff Member 5: Current Events Staff Member 6: Competency Education	Staff Member 3: Wellness Education Staff Member 2: Life Skills	Staff Member 2: Life Skills Staff Member 3: Wellness Education	Staff Member 3: Wellness Education Staff Member 2: Table Games	
1100-1150	Lunch	Lunch	Treatment Team Meeting: Grand Rounds	Lunch	Lunch
1200-1250	Individual Contacts	Staff Member 2: Brain Fitness	Lunch	Staff Member 2: Brain Fitness	Individual Contacts
1300-1350	Staff Member 6: Competency Education Staff Member 2: Table Games	Staff Member 4: Court Activity		Staff Member 4: Competency Education	Staff Member 4: My Life, My Choice
1400-1450	Staff Member 5: Trivia Challenge	Individual Contacts	Staff Member 7: Working with Your Attorney	Individual Contacts	JBCT Cinema
1500-1530	Individual Contacts	Chaplain: Bible Study	Individual Contacts	Individual Contacts	

4. SAMPLE PROPOSED JECT STAFFING MODEL:

Number of Beds	Six Beds
Treatment Team Staffing*	Program Director/Psychologist – 0.8 Psychiatrist – 0.2 Mental Health Clinician/Competency Trainer – 1.0
Administrative Staff*	Administrative Assistant – 0.5
Custodial Staff*	Deputy – 1.0
<i>*Number of positions reflect full-time equivalent (FTE) values</i>	

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

1. INVOICING AND PAYMENT

- A. Invoices shall be submitted not more frequently than monthly in arrears.
- B. For services satisfactorily rendered, upon the first Patient Inmate admission and upon receipt and approval of invoices submitted as described herein, the DSH agrees to compensate Contractor in accordance with the rates specified in section 5, Budget Detail.
- C. Contractor shall submit invoices for any and all initial program implementation costs associated with and pertaining to the items in Exhibit A, Scope of Work, Section 5, "Program Implementation Funds" within 12 months from the contract start date. The total initial program implementation costs invoiced shall not exceed \$60,500.00.
- D. The DSH is not responsible for services performed by Contractor outside of this Agreement, or for services performed other than as outlined in Exhibit A, Scope of Work and Exhibit A-1, Program Elements.
- E. The DSH makes no guarantee, either written or implied, as to the actual amount of funds that will be expended under this Agreement.

2. INSTRUCTIONS TO CONTRACTOR:

- A. To expedite the processing of invoices submitted to the DSH for payment, all invoice(s) shall be submitted to the DSH for review and approval at either:

Department of State Hospitals
Attention: Accounting Office
1600 Ninth Street, Room 141
Sacramento, CA 95814

OR

DSHSAC.AccountsPayable@deh.ca.gov

- B. Contractor shall submit one original and three copies of each invoice, unless emailed.
- C. Contractor shall type, not handwrite, each invoice on company letterhead. The DSH may provide an invoice template, if requested, which may be used in lieu of company letterhead.
- D. Contractor shall clearly note Contractor's name and address on each invoice. The name on the invoice must match the Payee Data Record (Std. 204) and the name listed on this Agreement.
- E. Contractor shall list and itemize, in accordance with the Budget Detail, all services or deliverables provided on each invoice.

F. Contractor shall include the following on each submitted invoice:

- i. Date(s) during which the services or deliverables were provided and the date in which the invoice was generated.
- ii. Agreement number, which can be found on the Standard Agreement Form (Std. 213).
- iii. Small Business certification number, if applicable.
- iv. Professional license number, if applicable.
- v. Invoice total.

3. BUDGET CONTINGENCY CLAUSE:

- A. It is mutually agreed that, if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall no longer be in full force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any Fiscal Year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State or offer an Agreement amendment to Contractor to reflect the reduced amount.
- C. If this Agreement overlaps Federal and State fiscal years, should funds not be appropriated by Congress or approved by the Legislature for the Fiscal Year(s) following that during which this Agreement was executed, the State may exercise its option to cancel this Agreement.
- D. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or the Legislature which may affect the provisions or terms of funding of this Agreement in any manner.

4. PROMPT PAYMENT CLAUSE:

- A. Payment will be made in accordance with, and within the time specified in, Government Code section 927, et seq.

5. BUDGET DETAIL:

- A. The maximum amount of this Agreement shall not exceed **\$2,810,965.00**.
- B. Upon contract execution as well as receipt and approval of the submitted invoices, the DSH shall compensate Contractor for program implementation costs that shall not exceed **\$60,500.00**.
- C. Upon the first Patient Inmate admission, the per diem rate shall be **\$418.84** per bed, totalling **\$2,511.84** per day for all six *Allocated Beds*. Upon invoicing, Contractor shall clearly identify the number of days in the month that services were provided.
- D. Beginning 90 days from the first Patient Inmate admission, if, over the course of each quarter period during the term of this Agreement, a 90 percent occupancy rate is not maintained, the DSH and Contractor shall execute an amendment to this Agreement upon jointly developing a plan to reduce the minimum number of beds provided and the budget amount accordingly. This provision shall correspond to the standard quarter periods commencing annually on July 1.

- E. At the sole discretion of the DSH and for the purposes of accounting, the DSH may adjust the total proposed expenditure for each fiscal year as needed. In no event will this change the contract price for the services actually rendered.
- F. Contractor must submit all invoices within a reasonable time, but no later than 12 months from the date that services were provided. If Contractor fails to provide invoices within 12 months of the date services are rendered, the DSH may elect to reject the invoices for payment as untimely and Contractor will be deemed to have waived any right to payment of the late invoices.
- G. Contractor shall not be reimbursed for any travel-related expenses. All travel shall be at the expense of Contractor.

Department of State Hospitals

County of Humboldt
Agreement Number: 19-79013-000
Exhibit B-1, Sample Invoice

**EXHIBIT B-1
SAMPLE INVOICE**

[Insert Contractor's Department company logo/address]

INVOICE

DATE	INVOICE #

Department of State Hospitals
Attn: Accounting Office
1600 9th Street, Room 141
Sacramento, CA 95814

PERIOD OF SERVICE	AGREEMENT #
[Insert date range of month being invoiced]	

Allocated -- Six Beds Maximum			
Per Diem Rate		Days In Treatment	Total for [Insert month being invoiced]
\$2,511.84	X	[Insert number of days in the month being invoiced]	= \$ _____
<i>*Per Diem Rate of \$418.64 Per Bed</i>			

Invoice Total for [Insert month being invoiced]:	\$ _____
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PLEASE MAKE REMITTANCE PAYABLE TO:
[Insert Contractor's Department billing contact/address]

Prepared By: [Signature here]
 [Insert name/title here]

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. ~~**INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.~~
6. **INDEMNIFICATION:** *In the event the State Department of State Hospitals and a county jail treatment facility are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under such a contract, each shall indemnify the other to the extent of its comparative fault.*
6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)
- Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. **TIMELINESS:** Time is of the essence in this Agreement.
13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. **CHILD SUPPORT COMPLIANCE ACT:** For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
17. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. SUBCONTRACTS:

- A. Except for subcontracts identified in accordance with the solicitation, Contractor shall submit any subcontracts in connection with this Agreement to the DSH for its prior written approval. No work shall be subcontracted without the prior written approval of the DSH. Upon the termination of any subcontract, the DSH shall be notified immediately. Any subcontract shall include all the terms and conditions of this Agreement and its attachments.
- B. Nothing contained in this Agreement shall create any contractual relationship between the DSH and any subcontractors, and Contractor is solely responsible for payment of any and all fees, expenses, salaries and benefits of subcontractor. No subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor is fully responsible to the DSH for the acts and omissions of its subcontractors and of persons either directly or indirectly employed or acting as an agent by any of them. Contractor agrees to indemnify and hold the DSH harmless for any costs, losses, or claims, including reasonable attorney fees, resulting from its subcontractors.

2. PUBLICATIONS AND REPORTS:

- A. The DSH reserves the right to use and reproduce all publications, reports, and data produced or delivered pursuant to this Agreement. The DSH further reserves the right to authorize others to use or reproduce such materials, provided the author of the report is acknowledged in any such use or reproduction.
- B. If the publication and/or report are prepared by non-employees of the DSH, and the total cost for such preparation exceeds \$5,000, the publication and/or report shall contain the numbers and dollar amounts of all agreements and subcontracts relating to the preparation of the publication and report in a separate section of the report (Government Code section 7650).

3. PROGRESS REPORTS:

- A. If progress reports are required by the Agreement, Contractor shall provide a progress report in writing, or orally if approved by the DSH Contract Manager, at least once a month to the DSH Contract Manager. This progress report shall include, but not be limited to; a statement that Contractor is or is not on schedule, any pertinent reports, and any interim findings if applicable. Contractor shall cooperate with and shall be available to meet with the DSH to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.

4. PRESENTATION:

- A. Upon request, Contractor shall meet with the DSH to present any findings, conclusions, and recommendations required by the Agreement for approval. If set forth in the Agreement, Contractor shall submit a comprehensive final report for approval. Both the final meeting and the final report shall be completed on or before the date indicated in this Agreement.

5. DEPARTMENT OF STATE HOSPITALS STAFF:

- A. The DSH's staff shall be permitted to work side-by-side with Contractor's staff to the extent and under conditions as directed by the DSH Contract Manager. In this connection, the DSH's staff shall be given access to all data, working papers, etc., which Contractor seeks to utilize.

6. CONFIDENTIALITY OF DATA AND DOCUMENTS:

- A. Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without written permission of the DSH Contract Manager. However, all public entities shall comply with California Public Records Act (Government Code sections 6250 et seq.).
- B. Permission to disclose information or documents on one occasion shall not authorize Contractor to further disclose such information or documents on any other occasion except as otherwise provided in the Agreement or required by law.
- C. Contractor shall not comment publicly to the press, or any other media, regarding the data or documents generated, collected, or produced in connection with this Agreement, or the DSH's actions on the same; except to the DSH's staff, Contractor's own personnel involved in the performance of this Agreement, or as required by law.
- D. If requested by the DSH, Contractor shall require each of its employees or officers who will be involved in the performance of this Agreement to agree to the above terms in a form to be approved by the DSH and shall supply the DSH with evidence thereof.
- E. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.
- F. After any data or documents submitted has become a part of the public records of the DSH, Contractor may at its own expense and upon written approval by the DSH Contract Manager, publish or utilize the same data or documents but shall include the following Notice:

LEGAL NOTICE

This report was prepared as an account of work sponsored by the Department of State Hospitals (Department) but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, expressed or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein, would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

7. PROVISIONS RELATING TO DATA:

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts; or may be retained in computer memory.
- B. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out, or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by Contractor in the performance of this Agreement at the expense of the DSH, together with complete documentation thereof, shall be treated in the same manner as generated data.
- C. "Deliverable data" is that data which under terms of this Agreement is required to be delivered to the DSH. Such data shall be property of the State of California and the DSH.
- D. Prior to the expiration of any legally required retention period and before destroying any data, Contractor shall notify the DSH of any such contemplated action; and the DSH may within 30 days of said notification determine whether or not this data shall be further preserved. The DSH shall pay the expense of further preserving this data. The DSH shall have unrestricted reasonable access to the data that is preserved in accordance with this Agreement.
- E. Contractor shall use best efforts to furnish competent witnesses to testify in any court of law regarding data used in or generated under the performance of this Agreement.
- F. All financial, statistical, personal, technical and other data and information relating to the DSH's operation, which are designated confidential by the State or the DSH and made available to carry out the Agreement, or which become available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use and disclosure.
- G. If the DSH determines that the data and information are inadequately protected by Contractor or its subcontractors, the DSH shall provide notice of its determination and Contractor and/or its subcontractors shall improve the protections to the DSH's satisfaction which shall be evidenced by written approval of the protections implemented.

8. APPROVAL OF PRODUCT:

- A. Each product to be approved under this Agreement shall be approved by the Contract Manager. The DSH's determination as to satisfactory work shall be final, absent fraud or mistake.

9. SUBSTITUTIONS:

- A. Contractor's key personnel as indicated in its proposal may not be substituted without the Contract Manager's prior written approval.

10. NOTICE:

- A. Notice to either party shall be given by first class mail, by Federal Express, United Parcel Service, or similar carrier, properly addressed, postage fully prepaid, to the address beneath the name of each respective party. Alternatively, notice may be given by personal delivery by any means whatsoever to the party and such notice shall be deemed effective when delivered.

11. WAIVER:

- A. All remedies afforded in this Agreement are cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the DSH to enforce any provision of this Agreement, shall not waive its right to enforce the provision or any other provision of the Agreement.

12. GRATUITIES AND CONTINGENCY FEES:

- A. Contractor shall not provide gratuities to any officer or employee of the DSH or the State to secure an agreement or favorable treatment with respect to an agreement, the occurrence of which shall constitute a material breach of this Agreement. The DSH, by written notice to Contractor, may terminate this Agreement with cause if it is found that gratuities were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of the State or the DSH with a view toward securing an agreement or securing favorable treatment with respect to the awarding, amending, or performance of such agreement.
- B. In the event this Agreement is terminated as provided in the paragraph above, the DSH shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Agreement by Contractor, and (b) as a predetermined amount of liquidated damages, Contractor shall pay an amount which shall not be less than three times the cost incurred by Contractor in providing any such gratuities to any such officer or employee.
- C. The rights and remedies of the DSH provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- D. Contractor warrants by execution of this Agreement that no person or selling agency has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Contractor, for the purpose of securing business. For breach or violation of this warranty, the DSH shall, among other rights, have the right to rescind this Agreement without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. INTEGRATION CLAUSE:

- A. The parties agree that this Agreement, including only the State standard form 213 and all exhibits, constitute the entire agreement of the parties and no other understanding or communication, whether written or oral, shall be construed to be a part of this Agreement.

14. CAPTIONS:

- A. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.

15. PUBLIC HEARINGS:

- A. If public hearings on the subject matter dealt with in this Agreement are held within one year from the Agreement expiration date, Contractor shall make available to testify the personnel assigned to this Agreement at the hourly rates specified in Contractor's proposed budget. The DSH shall reimburse Contractor for travel of said personnel at the Agreement, or if none, at State rates for such testimony as may be requested by the DSH.

16. FORCE MAJEURE:

- A. Neither the DSH nor Contractor shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement by causes beyond its control, which shall include, without being limited to: acts of God; interference, rulings or decision by municipal, Federal, State, or other governmental agencies, boards, or commissions; any laws and/or regulations of such municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, earthquakes, or other similar environmental causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable.

17. LITIGATION:

- A. The DSH, promptly after receiving notice thereof, shall notify Contractor in writing of the commencement of any claim, suit, or action against the DSH or its officers or employees. The failure of the DSH to give such notice, information, authorization, or assistance shall not relieve Contractor of its indemnification obligations. Contractor shall immediately notify the DSH of any claim or action against it which affects, or may affect, this Agreement, the terms or conditions hereunder, the DSH, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the DSH.
- B. Contractor shall be in default of this Agreement (i) upon the institution by or against Contractor of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Contractor's debts, (ii) upon Contractor making an assignment for the benefit of creditors, (iii) upon either party's dissolution or ceasing to do business or (iv) when the facts and circumstances indicate that Contractor is insolvent. For purposes of this Agreement, Contractor shall be deemed insolvent if: (i) Contractor has failed to pay salaries, overtime or benefits required by law of agreement, (ii) Contractor has failed to pay a subcontractor amounts owed pursuant to its agreements with a subcontractor, or (iii) Contractor has failed to pay a vendor amounts Contractor owes the vendor for more than 90 days the past due date for payment.

18. DISPUTES:

- A. Contractor shall first discuss and attempt to resolve any dispute arising under or relating to the performance of this Agreement, which is not disposed of by this Agreement, informally with the DSH Contract Manager. If the dispute cannot be disposed of at this level, then the dispute shall be decided by the DSH Deputy Director of Administration. All issues pertaining to this dispute shall be submitted in written statements and addressed to:

**Deputy Director of Administration
Department of State Hospitals
1600 9th Street, Room 101
Sacramento, California 95814**

Such written notice must contain the Agreement Number. Within 10 days of receipt of the written grievance report from Contractor, the Deputy Director of Administration, or his/her designee, shall meet with Contractor and the Project Manager for the purposes of resolving the dispute. The decision of the Deputy Director shall be final. During the dispute process, Contractor shall proceed diligently with the performance of this Agreement. Neither the pendency of a dispute, nor its consideration by the Deputy Director of Administration, shall excuse Contractor from full and timely performance of the services required in accordance with the terms of this Agreement.

19. EVALUATION OF CONTRACTOR'S PERFORMANCE:

- A. The DSH shall evaluate Contractor's performance under this Agreement using standardized evaluation forms which shall be made available to every state agency pursuant to Public Contracts Code section 10367.

20. AUDITS, INSPECTION AND ENFORCEMENT:

- A. Contractor agrees to allow the DSH to inspect its facilities and systems and make available for review its books and records to enable the DSH to monitor compliance with the terms of this Agreement and audit invoices submitted to the DSH.
- B. Contractor shall promptly remedy any violation of any provision of this Agreement to the satisfaction of the DSH.
- C. The fact the DSH inspects, or fails to inspect, or has the right to inspect Contractor's facilities, systems, books and records does not relieve Contractor of its responsibility to independently monitor its compliance with this Agreement.
- D. The DSH's failure to detect or the DSH's detection of any unsatisfactory practices, but failure to notify Contractor or require Contractor's remediation of the unsatisfactory practices does not constitute acceptance of such practice or a waiver of the DSH's enforcement rights under the Agreement.

21. USE OF STATE FUNDS:

- A. Contractor, including its officers and members, shall not use funds received from the DSH pursuant to this Agreement to support or pay for costs or expenses related to the following:
- I. Campaigning or other partisan activities to advocate for either the election or defeat of any candidate for elective office, or for or against the passage of any proposition or ballot measure; or,
 - II. Lobbying for either the passage or defeat of any legislation.
- B. This provision is not intended and shall not be construed to limit any expression of a view, opinion, or position of any member of Contractor as an individual or private citizens, as long as state funds are not used; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

22. CANCELLATION PROVISIONS:

- A. Unless otherwise specified, this Agreement may be canceled at any time by the DSH, in writing, with 30 days advance notice. If canceled, payment shall be made only for the provision of services expressly authorized by this Agreement until the date of cancellation and only at the rates set forth in Exhibit B, Budget Detail. In the case of early termination, a final payment will be made to Contractor upon receipt of an invoice covering all authorized costs, at the rates set forth in Exhibit B, incurred prior to the date of cancellation or termination. The DSH shall not be responsible for unamortized costs, overhead or capital costs or any other related costs, including but, not limited to costs incurred in connection with the cancellation of leases or contracts pertaining to facilities, equipment or supplies, labor and employee benefits costs, and expenditures incurred after the date of notice of cancellation.
- B. If the DSH determines that Contractor has breached a material term of the Agreement and has not cured the breach or ended the violation within the time specified by the DSH, the DSH may terminate the contract by providing notice to Contractor. The DSH Information Security Officer shall report as required HIPAA violations to the Secretary of the U.S. Department of Health and Human Services.
- C. Failure to comply with section 1 or 6 of this Exhibit, or a violation of section 12 of this Exhibit, shall be deemed a material breach of this Agreement.

23. EMPLOYMENT PROVISIONS:

- A. Contractor acknowledges and agrees that neither Contractor, their personnel, subcontractors, nor other service providers through this Agreement are employees of the DSH: Contractor and its independent contractors shall be solely responsible for:
- I. Paying any and all payroll taxes, including, but not limited to Social Security and Medicare taxes,
 - II. Federal or state income tax withholding,
 - III. Providing unemployment insurance and workers compensation insurance, and

- iv. Paying compensation to its employees in accordance with federal and state labor laws, including overtime pay unless otherwise specified in this Agreement, as well as penalties that may be imposed for failure to comply with these laws. Contractor agrees to indemnify and hold harmless the DSH for any damages, losses, expenses, including reasonable attorney fees, in connection with its failure to pay salary or overtime, or provide benefits, including, but not limited to health care benefits or retirement benefits, to its employees, or its failure to provide to comply with federal or state labor laws.

24. LIABILITY FOR LOSS AND DAMAGES:

- A. Any damages by Contractor, their personnel, subcontractors, and other service providers through this Agreement to the DSH's facility, including equipment, furniture, materials, or other State or DSH property, shall be repaired or replaced by Contractor to the satisfaction of the DSH at Contractor's expense. The DSH, at its option, may repair any such damage and deduct the cost thereof from any sum due Contractor under this Agreement.

25. SECURITY CLEARANCE/FINGERPRINTING/TUBERCULIN SKIN TESTING:

- A. The DSH reserves the right to conduct fingerprinting, drug testing, and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award and at any time during the term of the Agreement, in order to permit Contractor, their personnel, subcontractors, and other service providers through this Agreement access to State premises. The DSH further reserves the right to terminate this Agreement should a threat to security be determined.
- B. At the sole discretion of the DSH, and in accordance with each facility's Infection Control Policy, Contractor, their personnel, subcontractors, and anyone else affiliated with this Agreement providing services may be required to provide the DSH with Tuberculin (TB) test results. These test results shall indicate completion of the two-step TB testing process using the Mantoux method. The first step is a tuberculin skin test (TST) completed within the last 12 months prior to the date the tested person is to provide services to a DSH facility. The second step is a TST which must be completed within the 30 days prior to the date the tested person is to provide services to a DSH facility, unless otherwise specified.
- C. If both of the documented results of the TST provided $\leq 0-9$ /mm of induration, then the tested person may be cleared to provide services. However, if the documented result of the TST is ≥ 10 /mm of induration, then they shall be subject to additional testing and/or clearances before he or she is allowed to work at a DSH facility.
- D. The DSH reserves the right, in its sole and absolute discretion, to take measures to minimize the transmission of influenza. Contractor, their personnel, subcontractors, and other service providers through this Agreement may be required to either a) show written proof that they have received an influenza vaccine; or b) complete an Influenza Declination Form, which will be provided upon request. In addition, all non-vaccinated providers may be required to wear a mask. In its sole and absolute discretion, the DSH may elect to provide free influenza vaccines to Contractor, their personnel, subcontractors, and other service providers through this Agreement.

26. PHYSICIAN OWNERSHIP AND REFERRAL ACT OF 1993:

- A. For applicable medical services contracts, and in accordance with the Physician Ownership and Referral Act of 1993, Contractor shall not refer any patient to any health care provider or health-related facility if Contractor has a financial interest with that health care provider or health-related facility.
- B. Contractor may make a referral to or request consultation from a sole source health care provider or health-related facility in which financial interest is held if Contractor is located where there is no alternative provider of service within either 25 miles or 40 minutes travel time, subject to the prior approval of the DSH. Contractor shall disclose, in writing, as well as on a continuous basis, to the DSH, its financial interest at the time of referral or request for consultation. In no event, will this prohibit patients from receiving emergency health care services.

27. AMENDMENTS:

- A. If this Agreement was entered into pursuant to any statute expressly requiring that such agreements be let or awarded on the basis of competitive bids, then the parties may amend this Agreement for time or money at the same rates, in addition to the right to amend for other reasons contained in this Agreement or noted in the solicitation that resulted in this Agreement, if applicable. Any amendment shall be in writing and signed by both parties and be approved by the Department of General Services if such approval is required.
- B. For all other agreements the parties reserve the right to amend this Agreement as mutually agreed upon. This is in addition to the right to amend for other reasons contained in this Agreement or noted in the solicitation that resulted in this Agreement, if applicable. Any amendment shall be in writing and signed by both parties and be approved by the Department of General Services if such approval is required.

Revision 4-3-19

EXHIBIT E
CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS
(HIPAA Business Associate Agreement)

These Confidentiality and Information Security Provisions (for Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH) contracts) set forth the information privacy and security requirements Contractor is obligated to follow with respect to all confidential information (as defined herein) disclosed to Contractor, or collected, created, maintained, stored, transmitted, or used by Contractor for or on behalf of the California Department of State Hospitals (DSH), pursuant to Contractor's agreement with the DSH. The DSH and Contractor (the parties) desire to protect the privacy and provide for the security of DSH confidential information pursuant to this Exhibit and in compliance with state and federal laws applicable to the confidential information.

1. CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS:

- A. Contractor shall comply with applicable laws and regulations, including but not limited to Welfare and Institutions Code sections 14100.2 and 5328 et seq., the Lanterman-Petris-Short Act, Civil Code section 179B et seq., the Information Practices Act of 1977, Health and Safety Code section 123100 et seq., the Patient Access to Health Records Act, Title 42, Code of Federal Regulations (C.F.R.) part 431.300 et seq., and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to section 1320d et seq. of Title 42 of the United States Code and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (C.F.R.), Parts 160, 162 and 164) (HIPAA regulations) regarding the confidentiality and security of protected health information (PHI). The following provisions of this Exhibit set forth some of the requirements of these statutes and regulations. This Exhibit should not be considered an exclusive list of the requirements. Contractor is required to fulfill the requirements of these statutes and regulations by independently researching and obtaining legal advice on these requirements as they may be amended from time to time.
- B. Order of Precedence: With respect to confidentiality and information security provisions for all DSH confidential information, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and the DSH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- C. Effect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, and the information privacy and security requirements Contractor is obligated to follow with respect to DSH confidential information disclosed to Contractor, or collected, created, maintained, stored, transmitted or used by Contractor for or on behalf of the DSH, pursuant to Contractor's agreement with the DSH. When applicable, Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

2. DEFINITIONS:

- A. The following terms used in this Agreement between the DSH and Contractor shall have the same meaning as those terms in the HIPAA Rules: Breach, Covered Entity, Data Aggregation, Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific Definitions

- i. **Contractor.** Contractor shall have the same meaning as the term "business associate" at 45 C.F.R. section 160.103.
- ii. **HIPAA Rules.** HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164.
- iii. **Confidential Information.** Confidential information shall mean information or data that is Protected Health Information or Personal Information as defined herein.
- iv. **Personal Information (PI).** Personal Information shall have the same meaning as defined in Civil Code section 1798.3, subdivision (a).
- v. **Required by law,** as set forth under 45 C.F.R. section 164.103, shall mean a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- vi. **Security Incident.** Security Incident shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of Contractor's organization and intended for internal use; or interference with system operations in an information system.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:

A. Contractor agrees to:

- i. not use or disclose confidential information other than as permitted or required by the agreement between the DSH and Contractor or as required by law. Any use or disclosure of DSH confidential information shall be the Minimum Necessary;
- ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic confidential information, to prevent use or disclosure of confidential information other than as provided for by this Agreement with the DSH;
- iii. report to the DSH any use or disclosure of confidential information not provided for by this agreement with the DSH of which it becomes aware, including breaches of unsecured protected health information as required at 45 C.F.R. section 164.410, and any security incident of which it becomes aware;

- iv. In accordance with 45 C.F.R. sections 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents and subcontractors that create, receive, maintain, or transmit confidential information on behalf of Contractor enter into a written agreement with Contractor agreeing to be bound to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;
- v. to provide access and make available confidential information in a designated record set to the DSH or to an individual in accordance with 45 C.F.R. section 164.524 and California Health and Safety Code section 123100 et seq. Designated Record Set shall mean the group of records maintained for the DSH that includes medical, dental, and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DSH health plans; or those records used to make decisions about individuals on behalf of the DSH. Contractor shall use the forms and processes developed by the DSH for this purpose and shall respond to requests for access to records transmitted by the DSH within 15 calendar days of receipt of the request by producing the records or verifying that there are none;
- vi. If Contractor maintains an Electronic Health Record with PHI and an individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable the DSH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e);
- vii. If Contractor receives data from DSH that was provided to the DSH by the Social Security Administration, upon request by the DSH, Contractor shall provide the DSH with a list of all employees, subcontractors, and agents who have access to the Social Security data, including employees, contractors, and agents of its subcontractors and agents;
- viii. make any amendment(s) to confidential information in a Designated Record Set as directed or agreed to by the DSH pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy the DSH's obligations under 45 C.F.R. section 164.526;
- ix. to document and make available to the DSH or (at the direction of the DSH) to an individual within 15 days such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 C.F.R. section 164.528 and 42 U.S.C. section 17935(c). If Contractor maintains electronic health records for DSH as of January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after January 1, 2014. If Contractor acquires electronic health records for DSH after January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment, or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting;
- x. to the extent Contractor is to carry out one or more of the DSH's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the DSH in the performance of such obligation(s); and

- xi. make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA regulations.

4. PERMITTED USES AND DISCLOSURES OF CONFIDENTIAL INFORMATION BY THE CONTRACTOR:

- A. Except as otherwise provided in this Agreement between Contractor and the DSH, Contractor may use or disclose DSH confidential information to perform functions, activities, or services identified in this Agreement with the DSH provided that such use or disclosure would not violate federal or state laws or regulations.
- B. Contractor may not use or disclose the confidential information except as provided and permitted or required by this agreement with the DSH or as required by law.
- C. Contractor may use and disclose confidential information for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such uses and disclosures are required by law.
- D. Contractor may use confidential information to provide data aggregation services related to the health care operations of the DSH. Data aggregation means the combining of DSH confidential information created or received by Contractor on behalf of the DSH with confidential information received by Contractor in its capacity as the business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the DSH.

5. SAFEGUARDS:

- A. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards. The information privacy and security program shall reasonably and appropriately protect the confidentiality, integrity, and availability of the confidential information that it creates, receives, maintains, or transmits; and prevent the use or disclosure of confidential information other than as provided for by this Agreement with the DSH. Contractor shall provide the DSH with information concerning such safeguards as the DSH may reasonably request from time to time.
- B. Contractor shall implement administrative, technical, and physical safeguards to ensure the security of the DSH information on portable electronic media (e.g., USB drives and CD-ROM) and in paper files. Administrative safeguards to be implemented shall include, but are not limited to training, instructions to employees, and policies and procedures regarding the HIPAA Privacy Rule. Technical safeguards to be implemented must comply with the HIPAA Security Rule and Subpart C of part 164 of the HIPAA regulations with respect to electronic confidential information, and shall include, but are not limited to, role-based access, computer passwords, timing out of screens, storing laptop computers in a secure location (never leaving the equipment unattended at workplace, home or in a vehicle), and encryption. Physical safeguards to be implemented shall include, but are not limited to, locks on file cabinets, door locks, partitions, shredders, and confidential destruct.

6. AUTHENTICATION:

A. Contractor shall implement appropriate authentication methods to ensure information system access to confidential information is only granted to properly authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-88 and the SANS Institute Password Protection Policy.

I. Contractor shall implement the following security controls on each server, workstation, or portable (e.g., laptop computer) computing device that processes or stores confidential, personal, or sensitive data:

(1) network-based firewall and/or personal firewall,

(2) continuously updated anti-virus software and

(3) patch-management process including installation of all operating system/software vendor security patches.

II. Encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, CDs and thumb drives) and on portable computing devices (including, but not limited to, laptop computers, smart phones, and PDAS) with a solution that uses proven industry standard algorithms.

III. Prior to disposal, sanitize all DSH confidential data contained in hard drives, memory devices, portable electronic storage devices, mobile computing devices, and networking equipment in a manner consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-88.

IV. Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network unless, at minimum, a 128-bit encryption method (for example AES, 3DES, or RC4) is used to secure the data.

7. MITIGATION OF HARMFUL EFFECTS:

A. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of confidential information by Contractor or its subcontractors in violation of the requirements of the agreement.

8. NOTIFICATION OF BREACH:

A. During the term of this Agreement with the DSH, Contractor shall report to the DSH any use or disclosure of information not provided for by its contract of which it became aware including breaches of unsecured confidential information as required by 45 C.F.R. section 164.410.

9. DISCOVERY OF BREACH:

- A. Contractor shall immediately notify the DSH Chief Information Security Officer by telephone call and email upon the discovery of a breach of confidential information in all forms (paper, electronic, or oral) if the confidential information was, or is reasonably believed to have been, acquired by an unauthorized person, or within 24 hours by email or fax of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of confidential information in violation of this Agreement with the DSH, or potential loss of DSH confidential data. If the security incident occurs after business hours or on a weekend or holiday, notification shall be provided by calling the DSH Chief Information Security Officer. Contractor shall take:
- I. prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - II. any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

10. INVESTIGATION OF BREACH:

- A. Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of DSH confidential information. Within eight hours of discovery (of the breach), Contractor shall notify the DSH Chief Information Security Officer of at least the following:
- I. the data elements involved and the extent of the confidential data involved in the breach;
 - II. a description of the unauthorized person(s) known or reasonably believed to have improperly acquired, accessed, used, transmitted, sent, or disclosed confidential information;
 - III. a description of where and when the confidential information is believed to have been improperly acquired, accessed, used, transmitted, sent, or disclosed;
 - IV. a description of the probable causes of the improper acquisition, access, use, transmission, sending, or disclosure; and
 - V. whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are required.

11. WRITTEN REPORT:

- A. Contractor shall provide a written report of the investigation to the DSH Information Security Officer within 10 working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, an estimation of cost for remediation, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

12. NOTIFICATION OF INDIVIDUALS:

- A. Contractor shall notify Individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. Notification shall be made in the most expedient time possible without reasonable delay. The DSH Program Contract Manager, DSH Chief Information Security Officer, and DSH Chief Privacy Officer shall approve the time, manner, and content of any such notifications and their review and approval must be obtained by Contractor before the notifications are made.

13. DSH CONTACT INFORMATION:

- A. Contractor shall direct communications to the DSH Program Contract Manager, DSH Chief Information Security Officer, and DSH Chief Privacy Officer Contractor shall initiate contact as indicated herein. The DSH reserves the right to make changes to the contact information below by giving written notice to Contractor. Said changes shall not require an amendment to the agreement between the parties to which it is incorporated.

DSH Program Contract Manager	DSH Chief Privacy Officer	DSH Chief Information Security Officer
See the Scope of Work exhibit for Program Contract Manager	Chief Privacy Officer Office of Legal Services 1600 9 th Street, Room 433 Sacramento, CA 95814 Email: yamin.scardigli@dsh.ca.gov Telephone: (916) 654-2319	Chief Information Security Officer Information Security Office 1600 9 th Street, Suite 250 Sacramento, CA 95814 Email: iso@dsh.ca.gov and security@dsh.ca.gov Telephone: (916) 654-4218

14. INTERNAL PRACTICES:

- A. Contractor shall make Contractor's internal practices, books, and records relating to the use and disclosure of DSH confidential information received from the DSH, or created, maintained, or received by Contractor, available to the DSH or to the Secretary in a time and manner designated by the DSH or by the Secretary, for purposes of determining the DSH's compliance with HIPAA regulations.

15. EMPLOYEE TRAINING AND DISCIPLINE:

- A. Contractor shall train and use reasonable measures to ensure compliance with the requirements of this Agreement between the DSH and Contractor by employees who assist in the performance of functions or activities under this Agreement and use or disclose confidential information; and discipline such employees who intentionally violate any provisions of this Agreement.

16. EFFECT OF TERMINATION:

- A. Upon termination or expiration of this Agreement between Contractor and the DSH for any reason, Contractor shall return, at its sole expense, to the DSH all confidential information within five business days or as otherwise specified in the request or notice to return records or, if agreed to by the DSH, destroy all confidential information received from the DSH or created or received by Contractor on behalf of the DSH, that Contractor still maintains in any form. Contractor shall retain no copies of DSH confidential information. However, if return or destruction is not feasible, Contractor shall continue to extend the protections and provisions of the agreement to such information, and limit further use or disclosure of such confidential information to those purposes that make the return or destruction of such confidential information infeasible. This provision shall apply to DSH confidential information that is in the possession of Contractor, its subcontractor(s), or its agent(s).

17. MISCELLANEOUS PROVISIONS:

- B. The DSH shall notify Contractor and Contractor shall notify the DSH of restrictions on disclosures or the manner of confidential communications requested and agreed to by Contractor or the DSH from an individual to satisfy 45 C.F.R. section 164.522.
- C. Assistance in Litigation or Administrative Proceedings. Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement with the DSH, available to the DSH at no cost to the DSH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the DSH, its directors, officers, or employees for claimed violations of HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of Contractor and/or its subcontractors, employees, or agents, except where Contractor or its subcontractors, employees, or agents is a named adverse party.
- D. No Third-Party Beneficiaries. Nothing expressed or implied in the terms and conditions of this Agreement between Contractor and the DSH is intended to confer, nor shall anything herein confer, upon any person other than the DSH or Contractor and their respective successors or assignees, any rights, remedies, obligations, or liabilities whatsoever.
- E. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA regulations and applicable federal and state laws. The parties agree that any ambiguity in the terms and conditions of the agreement between the parties shall be resolved in favor of a meaning that complies and is consistent with state and federal law, including HIPAA and the HIPAA regulations.
- F. A reference in the terms and conditions of this Agreement between the DSH and Contractor to any HIPAA regulation relates to that section in effect or as amended.
- G. The obligations of Contractor under this Exhibit E shall survive the termination or expiration of this Agreement.

18. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS:

- A. The DSH may immediately terminate this Agreement between Contractor and the DSH if (a) Contractor is found liable in a civil or criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (b) a finding or stipulation that Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws made in an administrative or civil proceeding in which Contractor is a party.

19. TERMINATION FOR CAUSE:

- A. In accordance with 45 C.F.R. section 164.504(e)(1)(ii), upon the DSH's knowledge of a material breach or violation of this Exhibit by Contractor, the DSH shall:
- I. Provide an opportunity for Contractor to cure the breach or end the violation and terminate the Agreement if Contractor does not cure the breach or end the violation within the time specified by the DSH; or
 - II. Immediately terminate the Agreement if Contractor has breached a material term of this Exhibit and cure is not possible.

Revision 8-1-19

Department of State Hospitals

County of Humboldt
Agreement Number: 19-79013-000
Exhibit F, Information Privacy and Security Requirements
(Non-HIPAA/HITECH Act Contracts)

EXHIBIT D
Staffing Matrix

JBCT STAFFING PLAN										
Position	SUN	MON	TUE	WED	THU	FRI	SAT	Total Hrs.	FTEs	
Psychiatrist	0.0	On-site M-F, day shift						0.0	8.0	0.20
Psychologist	0.0	On-site M-F, day shift						0.0	24.0	0.60
Mental Health Clinician/Competency Trainer	0.0	On-site M-F, day shift						0.0	40.0	1.00
Admin Assistant	0.0	On-site M-F, day shift						0.0	20.0	0.50
Subtotal								92.0	2.30	
TOTAL								92.0	2.30	