

MADERA COUNTY MASTER CONTRACT NO. 20
(Behavioral Health Services: Master Services Agreement)

AGREEMENT

1. **DESCRIPTION OF SERVICES.** COUNTY hereby engages CONTRACTOR to provide services to COUNTY's Medi-Cal beneficiaries and indigent residents who are not covered by other third-party payors ("CLIENTS") as provided in the Master Contract Cover Sheet, any Attachment(s) specified in the Master Contract Cover Sheet, as follows:

1.01 **Facility.** CONTRACTOR shall maintain a safe facility which will provide an environment conducive to the treatment of CLIENTS. This facility shall include, but not be limited to, adequate space and patient access to the patients' rights advocate, family members and visitors.

1.02 **Safe and Accessible Facility.** CONTRACTOR shall maintain, at its own expense, a safe facility in which services are provided to CLIENTS. All services shall be rendered in a facility which complies with facility access for disabled persons as required by Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and related California statutes.

1.03 **Services to Be Provided.** CONTRACTOR shall provide services to CLIENTS who are referred to the facility by designated COUNTY staff, on a space available basis. All services provided to CLIENTS must be pre-authorized by COUNTY. COUNTY shall use its best efforts to provide CONTRACTOR with such CLIENT information as is reasonably necessary to aid CONTRACTOR in providing treatment to CLIENTS. COUNTY shall notify CONTRACTOR, prior to admission, of the need for additional non-standard equipment. CONTRACTOR will not be responsible for CLIENT'S admission or discharge transportation.

1.04 **Protection of Rights.** CONTRACTOR agrees to protect the rights of CLIENTS admitted for services in compliance with state and federal law. CONTRACTOR shall comply with all relevant rules, regulations, statutes, and COUNTY policies and procedures related to individuals' rights to a complaint process and timely complaint resolution. CONTRACTOR shall comply with the Mental Health Plans ("MHPs"), Medi-Cal beneficiary, Mental Health Services Act, and/or Standard Drug Medi-Cal ("DMC") Program problem resolution process. Nothing in this Agreement shall prevent Medi-Cal beneficiaries from utilizing the MHPs and other rights and processes regarding complaints and grievances, which are guaranteed by statute.

1.05 **Clinical Records.** CONTRACTOR's individual records shall contain intake information, interviews and progress notes. Clinical records shall contain details adequate for the evaluation of the service, as identified in the Network Provider Manual which is available on COUNTY's website, maderacounty.com, under "Behavioral Health Services" and incorporated herein by reference, together with any amendments or changes to the manual, and when rendered by a CONTRACTOR who meets the appropriate requirements to provide covered services.

2. **LAWS, LICENSES, PERMITS AND REGULATIONS.** CONTRACTOR and COUNTY agree to comply with all state and federal laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to CONTRACTOR and COUNTY, their sub-grantees, contractors, or sub-contractor, and their work. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, COUNTY and all other appropriate

governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for termination of this Agreement by COUNTY.

3. **CREDENTIALING.** If CONTRACTOR is performing Medi-Cal billable services and/or receiving federal funds under this Agreement, then CONTRACTOR may be subject to COUNTY's credentialing process which includes, but is not limited to:

3.01 **For Medi-Cal Billable Services**

3.01.1 Curriculum vitae;

3.01.2 Malpractice insurance certificate;

3.01.3 Copy of current licensure;

3.01.4 National Provider Identifier ("NPI") Number. Registration for NPI number is found at npiregistry.cms.hhs.gov under NPPES;

3.01.5 Once initial credentialing is completed, re-credentialing process will occur no less frequently than every three (3) years.

3.02 **For Federal Grant Services and/or When Necessary**

3.02.1 Copy of current licensure if applicable;

3.02.2 NPI Number. Registration for NPI number is found at npiregistry.cms.hhs.gov under NPPES;

3.02.3 DUNS (Dun & Bradstreet's Data Universal Numbering System) Number. Registration for DUNS number is found at: grants.gov/web/grants/applicants/organization-registration/step-1-obtain-duns-number.html;

3.02.4 SAM Account (System for Award Management). Registration for SAM Account is found at sam.gov.

3.02.5 Once initial credentialing is completed, re-credentialing process will occur no less than every three (3) years.

3.03 The credentialing process is required to be completed prior to reimbursement for eligible services. CONTRACTOR is responsible for notifying COUNTY of all providers and subcontracted providers performing under this Agreement and assisting in the credentialing process as needed.

4. **PAYMENTS TO CONTRACTOR.**

4.01 **Payment of Invoices.** Payments by COUNTY shall be monthly, in arrears, for services provided during the preceding month, within sixty (60) days after receipt, verification and approval of CONTRACTOR's invoices by COUNTY. If CONTRACTOR fails to comply with any provision of this Agreement, COUNTY shall be relieved of its obligation for further compensation.

4.02 **CONTRACTOR Invoices.** Except as otherwise provided, CONTRACTOR shall submit invoices to COUNTY at: Behavioral Health Services, Accounts Payable, P.O. Box 1288, Madera CA 93639, within sixty (60) days from service month end.

4.03 **Rate Structure; Contingent Liability of COUNTY/State.** Upon the submission of a claim, COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to accept from COUNTY as payment in full, subject to any fees and patient share of costs, for authorized services provided to CLIENTS. Those rates are included as an exhibit to Master Contract Cover Sheet.

4.04 **Certification for Services Provided.** CONTRACTOR shall certify that all services reported to COUNTY meet reimbursement criteria as defined by the California Department of Health Care Services ("DHCS")/California Department of State Hospitals ("DSH"). CONTRACTOR shall not claim payment for any service which does not meet such standards and requirements. In the event that CONTRACTOR discovers that a claim has been improperly submitted, CONTRACTOR shall immediately notify COUNTY.

4.05 **Account Receivable Payment.** CONTRACTOR shall provide to COUNTY the necessary documentation for COUNTY to receive payment from Medi-Cal, Medicare, and any other public and/or private insurance or payee. CONTRACTOR agrees that COUNTY shall withhold payment for lack of appropriate records and/or contents.

4.06 **Audit of Invoices/Disallowances.** Each invoice is subject to audit, and COUNTY may make payments on invoices in advance of such audits. In the event that an invoice is disapproved for payment after audit, COUNTY may, at its sole discretion, withhold compensation or set off from other payments due to CONTRACTOR the amount of said disapproved invoices. COUNTY shall have the right to demand of CONTRACTOR the repayment to COUNTY of any funds disbursed to CONTRACTOR under this Agreement which, in the judgment of COUNTY, were not expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly refund any such funds upon demand.

5. **COMPLIANCE WITH QUALITY ASSURANCE/IMPROVEMENT AND UTILIZATION REVIEW.** CONTRACTOR shall be in full compliance with COUNTY's Quality Management Plan. CONTRACTOR shall cooperate and participate with COUNTY in Quality Assurance/Improvement and Utilization Review Programs, grievance/appeal

procedures, and comply with all final determinations rendered by such. COUNTY's adverse decisions regarding CONTRACTOR services to CLIENT(S) may result in: the disallowance of payment for service(s) rendered; additional controls on the delivery of service(s); or the termination of this Agreement. COUNTY shall have sole discretion in the determination of Quality Assurance/Improvement and Utilization Review outcomes, decisions, and actions.

6. **CONTRACTOR GRIEVANCE PROCEDURE.** CONTRACTOR may appeal a denied or reduced request for payment for services rendered. The written appeal shall be submitted to COUNTY within thirty (30) calendar days of the postmark date of the notification of the denial of payment. Final determination of all appeals shall be made by designated staff of COUNTY Behavioral Health Services. All appeals of adverse decisions shall be submitted to COUNTY's address set forth in Section 4.02, above.

7. **RECORDS, REPORTING, AUDITS.** CONTRACTOR agrees to complete and submit all forms and reports as required by COUNTY. CONTRACTOR shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, COUNTY shall have free access at all proper times or until the expiration of ten (10) years after the furnishing of services to such records, the last date of service, or termination of contract, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by CONTRACTOR. Any cost apportionments shall be made using generally accepted accounting principles and shall have proper "audit trails" reflecting the true cost of the services. CONTRACTOR may be

asked to provide a tax statement or audited end-of-year financial statement sufficient to establish, for state audit purposes, the rates for services as provided in this Agreement are reasonable based on CONTRACTOR's operating costs.

7.01 **Ownership of Documents.** To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder are the exclusive property of COUNTY and upon request of COUNTY shall be delivered to COUNTY upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of COUNTY, and to the extent permitted by law, shall become the property of COUNTY. CONTRACTOR may retain copies thereof for its files and internal use. Any publication of information directly derived from work performed or data obtained in connection with services rendered under this Agreement must be first approved by COUNTY.

7.02 **Closure of Facility.** If CONTRACTOR's facilities are closed, CONTRACTOR shall notify COUNTY within forty-eight (48) hours, followed by written notice, of all arrangements made by CONTRACTOR for preservation of all financial, service, and other records prepared pursuant to this Agreement.

7.03 **Audits and Inspections.** CONTRACTOR shall, at any time during normal business hours and as often as deemed necessary, make available to COUNTY and authorized agencies, including but not limited to: DHCS, DSH, the Department of Health and Human Services ("DHHS"), the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, facilities, and staff, records and data pertaining to the matters covered by this Agreement.

7.03.1 Exceptions and Disallowances. With regard to any audit exceptions or disallowances, as determined by COUNTY or authorized agencies, COUNTY shall have the right to demand repayment from CONTRACTOR of any audit exception or disallowance, with repayment to begin sixty (60) days after such demand. COUNTY may, in its sole discretion, withhold compensation or set off from other payments due to CONTRACTOR in the amount of the exception or disallowance.

7.03.2 Appeal Recoupment. CONTRACTOR may appeal the recoupment in accordance with state and federal laws. Recoupment shall begin sixty (60) days after demand resulting from an audit or review and shall not be deferred by the filing of a request for an appeal.

7.03.3 Liability for Recovery. CONTRACTOR's liability to COUNTY for any amount recovered under this section shall be according to applicable procedural requirements.

8. **COUNTY'S RIGHTS NOT WAIVED BY PAYMENTS.** In no event shall any payment by COUNTY to CONTRACTOR constitute, or be construed as, a waiver by COUNTY of any breach of covenant, or of any default which may then exist, on the part of CONTRACTOR. The making of any such payment by COUNTY, while any such breach or default exists, shall not be construed as acceptance of substandard or careless work or as relieving CONTRACTOR from its full responsibility under this Agreement.

9. **INDEMNITY.** The parties hereto shall indemnify, defend and hold harmless, the other party, and that party's officers, agents and employees from and against any and all claims, losses, liabilities, damages, demands and actions (all collectivity referred to herein as "liability") arising out of each party's respective performance of this Agreement.

10. **INSURANCE.**

10.01 **Maintenance of Insurance Coverage.** Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, at all times during this Agreement, CONTRACTOR shall obtain and maintain insurance policies as specified in the Master Contract Cover Sheet CONTRACTOR. In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein required, COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

10.02 **Proof of Insurance.** If insurance is required, CONTRACTOR shall furnish COUNTY with a Certificate of Insurance (or Certificate of Self Insurance) with original endorsements demonstrating the insurance coverage required by this Agreement, together with a certified copy of each such insurance policy. The certificates and endorsements for each insurance policy are to be signed by the person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided or approved by COUNTY and are to be received by COUNTY and attached to the Master Contract Cover Sheet prior to execution of the Agreement. The required insurance policies shall not be cancelled without at least thirty (30) days prior written notice to COUNTY. Upon expiration of the certification or other proof of insurance for any of the foregoing policies, CONTRACTOR shall provide to COUNTY a new certification or other proof of insurance which contains the new expiration date for the insurance policy. Except as otherwise provided in the Master Contract Cover Sheet, all required policies are to contain, or be endorsed to contain, the following provisions:

10.02.1 COUNTY, its officers, agents and employees are named as additional insureds.

10.02.2 The coverage is primary with respect to COUNTY and its officers, agents and employees.

10.02.3 The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its officers, agents and employees.

10.02.4 Any insurance or self-insurance maintained by COUNTY, its officers, agents and employees, shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

10.02.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to COUNTY, its agents, officers and employees.

10.02.6 Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11. TERMINATION AND BREACH.

11.01 Non-Allocation of Funds. The terms of this Agreement and the services to be provided hereunder are contingent upon the approval of funds by the appropriating government agency. In the event that funding from the applicable agency ceases or is decreased, authorization for funding is terminated, or subsequently enacted federal or state legislation, regulation, policy or procedure reduces or abolishes funding or otherwise renders performance of the provisions of the Agreement substantially more difficult, this Agreement may be terminated or modified by the parties hereto in writing. If the parties cannot reach an agreement regarding modifications which would permit performance

under this Agreement to continue, the Agreement will automatically terminate. Each party shall give the other thirty (30) days advance written notice of its intention to terminate or modify the Agreement pursuant to this provision, specifying the date of termination. In the event of termination for non-allocation of funds, CONTRACTOR shall ensure an orderly transition of care for CLIENTS receiving services including, but not limited to, the transfer of CLIENTS' records. Under these circumstances, all invoices must be submitted to COUNTY prior to the final date for which funding is available.

11.02 **Breach of Contract.**

11.02.1 Suspension/Termination for Cause. COUNTY may immediately suspend or terminate this Agreement, in whole or in part, where, in the determination of COUNTY, there is a failure to comply with the terms of this Agreement, including but not limited to:

- a. CONTRACTOR fails to comply with any term of this Agreement;
- b. CONTRACTOR submits a substantially incorrect or incomplete report to COUNTY;
- c. CONTRACTOR improperly performs any service;
- d. exclusion of CONTRACTOR from participation in state or federal health care programs under the Social Security Act;
- e. an illegal or improper use of funds by CONTRACTOR;
- f. CONTRACTOR, its employees or subcontractors, fail to abide by CONTRACTOR's code of ethical conduct or COUNTY's Code of Ethics as listed in COUNTY's Compliance Handbook, located on

COUNTY's website maderacounty.com under "Behavioral Health Services;"

- g. it is found that consideration, in any form, was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to CONTRACTOR's performance pursuant to this Agreement;
- h. CONTRACTOR becomes insolvent, files for bankruptcy, or has a receiver appointed for its assets.
- i. CONTRACTOR fails to comply with any state and/or federal laws and regulations

11.02.2 Waiver of Breach. No waiver by COUNTY of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of COUNTY to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. In no event shall any payment by COUNTY constitute a waiver by COUNTY of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default.

11.02.3 Right to Cure. Notwithstanding anything else in this Agreement to the contrary, if CONTRACTOR fails to perform any obligation of this Agreement, COUNTY may itself perform, or cause the performance of such agreement or obligation. In that event, CONTRACTOR will, on demand, fully reimburse COUNTY for all such expenditures. Alternatively, COUNTY, at its option, may deduct from any funds owed to CONTRACTOR the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to COUNTY by law or as otherwise stated in this Agreement.

11.03 Termination for Convenience. This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by COUNTY at any time without cause or legal excuse by providing the other party with sixty (60) calendar days written notice of such termination. Upon effective date of termination, COUNTY shall have no further liability to CONTRACTOR except for payment of invoices for services during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by COUNTY. Such liability is further limited to the extent such services occurred, were deemed necessary, reasonable, and verifiable and have been incurred by CONTRACTOR prior to, and in connection with, discontinuing the work hereunder.

11.04 Continuity of Care. Upon termination of this Agreement for any reason, CONTRACTOR shall ensure an orderly transition of care for CLIENT(S) receiving treatment, including, but not limited to, the transfer of CLIENT(S)' medical records.

12. NOTICES.

12.01 **Delivery of Notice.** Notices between COUNTY and CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed to be duly served when personally delivered to the other party or, in lieu of such personal delivery, when deposited in the United States mail, postage prepaid, addressed to such party at the address specified in the Master Contract Cover Sheet. If mutually agreed by the parties, email notice is acceptable and considered delivered as of the date sent.

12.02 **Change of Address/Telephone Number/Email.** Written notice of any change of address and/or telephone number and/or email shall be given to the other party within five (5) business days of the change.

12.03 **Authorized Persons.** The persons having authority to give and receive notices under this Agreement and their addresses shall be set forth in the Master Contract Cover Sheet.

13. **INDEPENDENT CONTRACTOR; CONFLICTS OF INTEREST.**

13.01 **Independent Capacity.** This Agreement is by and between COUNTY and CONTRACTOR and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between COUNTY and CONTRACTOR. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services under this Agreement. COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. Notwithstanding this independent contractor relationship, COUNTY

shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

13.02 **Workers' Compensation.** CONTRACTOR understands and agrees that all persons performing work under this Agreement are solely employees of CONTRACTOR, and not of COUNTY, for purposes of workers' compensation liability. CONTRACTOR shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of CONTRACTOR under this Agreement.

13.03 **No Rights to COUNTY Benefits.** CONTRACTOR shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons performing work pursuant to this Agreement. COUNTY shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of CONTRACTOR. Because of CONTRACTOR's status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees.

13.04 **Conflict of Interest.** CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. CONTRACTOR shall ensure that no conflict of interest exists between its officers, employees, or sub-contractors, and COUNTY. CONTRACTOR shall ensure that no COUNTY officer or employee in a position that enables them to influence this Agreement will have any direct or indirect financial interest resulting from this Agreement. CONTRACTOR shall ensure that no COUNTY

employee shall have any relationship to CONTRACTOR or officer or employee of CONTRACTOR, nor that any such person will be employed by CONTRACTOR in the performance of this Agreement without immediate divulgence of such fact to COUNTY.

13.05 **Subcontract Assignments.** CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontractor will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not. CONTRACTOR hereby assigns to COUNTY 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 the purchase of goods, materials, or services by CONTRACTOR for sale to COUNTY pursuant to this Agreement.

14. **ASSURANCE OF NON-DISCRIMINATION.**

14.01 CONTRACTOR expressly agrees not to differentiate or discriminate in employment or the provision of services on the basis of race, ethnicity, age, color, national origin, ancestry, religion, religious creed, sex, marital status, medical condition, mental or physical disability, sexual orientation, political belief, or any other basis protected by federal or state law, as they now exist or may be amended in the future. CONTRACTOR shall comply with all applicable provisions and implementing regulations of federal and state law with respect to non-discrimination by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory

14.02 CLIENTS will receive the same level of care as provided to all other clients served by CONTRACTOR. CONTRACTOR shall render behavioral health services to CLIENTS in the same manner, in accordance with the same standards and within the same time availability as offered other clients, except as limited by existing COUNTY restrictions.

14.03 CONTRACTOR shall not unlawfully discriminate in the appointment and employment of staff and subcontractors, including compliance with facility access for disabled persons as required by section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Fair Employment and Housing Act and related state and federal laws. CONTRACTOR shall give written notice of its obligations under the foregoing provisions to labor organizations with which it has a collective bargaining agreement or other labor agreements.

14.04 CONTRACTOR agrees to compile data, maintain records and submit reports as required by this Agreement to permit effective enforcement of federal and state non-discrimination laws, rules and regulations and permit authorized COUNTY, state and/or federal government personnel to review records, books and accounts of CONTRACTOR during normal working hours as needed to ascertain compliance.

14.05 If there are any violations of this section, the state and/or federal government shall have the right to impose fiscal sanctions or other legal remedies, the issue may be referred to the appropriate state or federal agency, and/or COUNTY may withhold all further funds until CONTRACTOR can show evidence to the satisfaction of COUNTY that funds provided under this Agreement were not used in connection with the alleged discrimination.

14.06 CONTRACTOR shall immediately take any measures necessary to effectuate the terms of this Non-Discrimination Assurance.

15. **COMPLIANCE WITH STATE AND FEDERAL PRIVACY AND SECURITY LAWS.**

15.01 **Compliance in General.** CONTRACTOR shall comply with all applicable federal and state laws regulating the privacy and security of Protected Health Information ("PHI") to include but not be limited to: Code of Federal Regulations ("CFR") Title 42, section 431.300 et seq.; W&I Code sections 5328 et seq. and 14100.2; Health Insurance Portability and Accountability Act of 1996 ("HIPAA") 45 CFR Parts 160 & 164; Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 ("ARRA") and regulations adopted thereunder. It is understood by CONTRACTOR and COUNTY that any part of the privacy or security regulations contained in HIPAA or other laws may, during the term of this Agreement, be modified by Congress or by the United States Department of Health and Human Services or may be interpreted by a court in a manner impacting compliance. Should such an event occur, the privacy and security regulations as modified or interpreted shall be incorporated into this Agreement and shall become the standard for compliance with the regulations. The provisions of this section are self-executing upon change(s) to the privacy or security regulations by any event referenced above.

15.02 **Compliance with HIPAA.** CONTRACTOR will employ appropriate safeguards to prevent the use or disclosure of any information which is protected by HIPAA in any manner not set forth under this Agreement or for purposes other than treatment, consultation, referral or payment and will follow all breach reporting laws.

15.02.1 Protection of Confidential Information. For the purpose of this Agreement, all information, records, data and data elements collected and maintained for the operation of this Agreement and pertaining to recipients of behavioral health services shall be protected by CONTRACTOR from unauthorized disclosure. This includes but is not limited to, names, identifying numbers, symbols, or other identifying particulars of persons receiving public social services, mental health services, and substance use disorder treatment services. Such information is confidential and to be protected from unauthorized disclosure.

15.02.2 Use of Confidential Information. With respect to any identifiable recipient information obtained by CONTRACTOR, its employees, agents or subcontractors under this Agreement, CONTRACTOR shall:

- a. Not use any such information for any purpose other than carrying out the express terms of this Agreement;
- b. Promptly transmit to COUNTY all requests for disclosure of such information;
- c. Not disclose, except as otherwise specifically permitted by this Agreement, any such information to any party without prior written authorization by COUNTY specifying that the information may be released under CFR Title 42, section 431.300 et seq. and W&I Code section 14100.2, and regulations adopted thereunder;
- d. At the discretion of COUNTY, return all such information to COUNTY or maintain such information according to written

procedures of DHCS for this purpose, at the expiration or termination of this Agreement.

15.03 **Compliance with HITECH.** If CONTRACTOR maintains an Electronic Health Record ("EHR") with PHI and in accordance with its obligations under HITECH Act:

15.03.1 CONTRACTOR and COUNTY data submission shall meet the privacy and security provisions of HIPAA, HITECH, and all related state and federal regulations for the access, maintenance and storage of system data and files.

15.03.2 If CONTRACTOR accesses COUNTY EHR software, this will be done through a private and secure network connection.

15.04 **Breaches and Security Incidents.** CONTRACTOR agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

15.04.1 CONTRACTOR will report upon discovery any unsecured HIPAA and/or HITECH breach to the DHCS, DHCS Information Security Officer and Madera County Behavioral Health Services Director within twenty-four (24) hours of an occurrence;

15.04.2 A notice to DHCS must use the most current "Privacy Incident Report" form available on the dhcs.ca.gov, with a copy to Madera County Behavioral Health Services Director;

15.04.3 CONTRACTOR will have seventy-two (72) hours from discovery to investigate such security incident, breach or unauthorized access, to the

extend known at that time and report this information to the parties identified in 15.04.2 above.

15.04.4 A completed investigation report must be submitted within ten (10) business days to the parties identify in 15.04.2 above.

16. **REPORTING OF PATIENT/CLIENT ABUSE, UNUSUAL OCCURRENCES/ DEATH/SUICIDE.**

16.01 **Elders and Dependent Adults Abuse.** CONTRACTOR shall comply with W&I Code section 15630 et seq. and shall report all known or suspected instances of physical abuse of elders and dependent adults under the care of CONTRACTOR either to an appropriate COUNTY adult protective services agency or to a local law enforcement agency, as mandated by W&I Code sections 15630-15632. CONTRACTOR shall make this report on such abuse and shall submit all required information in accordance with W&I Code sections 15630, 15633 and 15633.5:

16.02 **Minor Children Abuse.** CONTRACTOR shall comply with California Penal Code ("PC") section 11164 et seq. and shall report all known or suspected instances of child abuse to an appropriate child protective services agency, as mandated by PC sections 11164, 11165.8 and 11166. CONTRACTOR shall make the report on such abuse and shall submit all required information in accordance with PC sections 11166 and 11167.

16.03 **Notification.** CONTRACTOR shall notify COUNTY of all allegations and actual incidents (e.g., abuse, injuries and deaths) affecting CLIENTS within twenty-four (24) hours of occurrence and provide COUNTY with a copy of all investigation reports concerning incidents and the disposition of, or corrective action taken to resolve, the

complaint. CONTRACTOR shall notify COUNTY of reports to the appropriate reporting agency according to state laws and regulations.

17. **CODE OF CONDUCT.** CONTRACTOR shall abide by the provisions of its own code of ethical conduct, or if it does not have such a code of conduct, abide by the Code of Ethics as listed in COUNTY's Compliance Handbook, located on COUNTY's website maderacounty.com under "Behavioral Health Services."

18. **CULTURAL COMPETENCE.** CONTRACTOR shall use a set of professional skills, behaviors, attitudes and policies that enable the system, or those participating in the system, to work effectively in meeting the cross-cultural needs of COUNTY's CLIENTS. CONTRACTOR shall have a written policy and procedure that ensure organizational and individual compliance by its staff and providers. CONTRACTOR shall comply with any and all request from COUNTY for a list of cultural competency trainings and sign in sheets of CONTRACTOR staff attending those trainings who provide services in programs, which serves CLIENTS. Trainings shall include direct and indirect service staff/contractors.

19. **DRUG-FREE WORKPLACE.** CONTRACTOR will comply with the requirements of the Drug-Free Work Place Act of 1990, Government Code section 8350 et seq. If applicable, CONTRACTOR shall also comply with the federal Drug-Free Workplace Act of 1988, 41 U.S.C. 81. CONTRACTOR hereby provides the certifications required by those laws and regulations. CONTRACTOR's compliance shall include, but is not limited to, the following:

19.01 **Publish Statement.** Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled

substance is prohibited in the person's or organization's work place and specifying the actions that will be taken against employees for violations of the prohibitions.

19.02 **Establish Awareness Program.** Establish a drug-free awareness program to inform employees about all of the following:

19.02.1 The dangers of drug abuse in the work place;

19.02.2 The organization's policy of maintaining a drug-free work place;

19.02.3 Available drug counseling, rehabilitation, and employee assistance programs; and

19.02.4 The penalties that may be imposed upon employees for drug abuse violations.

19.03 **Employee Notification/Agreement.** Require that every employee engaged in the performance of this Agreement:

19.03.1 Be given a copy of CONTRACTOR's drug-free policy statement;

19.03.2 As a condition of providing services pursuant to this Agreement, agree to abide by the terms of the statement.

20. **EXCLUSION FROM PARTICIPATION IN FEDERAL PROGRAMS.**

CONTRACTOR assures that, at the time of entering into this Agreement, it is not excluded from participation in federal health care programs or federal grant funds.

20.01 **Health Care Programs.** CONTRACTOR shall not be excluded from participation in federal health care programs under either section 1128 or 1128A of the Social Security Act. CONTRACTOR shall notify COUNTY immediately if such exclusion

occurs during the term of this Agreement. Exclusion of CONTRACTOR from participation in federal health care programs shall be cause for immediate termination of this Agreement.

20.01.1 Employees of CONTRACTOR who, because of convictions or because of current or past failures to comply with state and federal program requirements, become designated as ineligible persons or are identified for exclusion from involvement in state and federal programs, shall be removed from responsibility or participation in or involvement with all aspects of this federally funded program, until such time as the person or entity is no longer identified on the exclusion lists.

20.01.2 CONTRACTOR shall be responsible for performing ongoing exclusion reviews of current employees to ensure that CONTRACTOR does not hire or contract with any individual or entity under sanction or exclusion by the state and federal government. As an outcome of ongoing exclusion reviews, CONTRACTOR agrees to provide to COUNTY written certification under penalty of perjury that no current employee, subcontractor, entity or agent is excluded from participation of Medicaid or Medi-Cal programs per 42 CFR 455.436 and W&I Code Section 14043.61. Detailed reporting shall be made available to COUNTY upon demand. Failure to comply shall lead to termination of the Agreement.

20.01.3 CONTRACTOR shall be responsible for ensuring and attesting that all providers or any person with a five percent (5%) or more direct or indirect ownership in the provider under this Agreement have undergone a criminal background check per 42 CFR 45.434 and other applicable state requirements based on the category of the provider.

20.01.4 COUNTY shall not reimburse for past, present or future services rendered by individuals who were under employment by CONTRACTOR and have been excluded from federal and state participation.

20.02 **Federal Grant Funds.** CONTRACTOR participating in federal grant programs must have registered for a DUNS Number and with SAM. CONTRACTOR shall comply with all requirement in 42 CFR Part 1001.

21. **COMPLIANCE WITH LAWS/POLICIES.** CONTRACTOR shall at all times perform the duties to be provided under this Agreement to the best of its ability and in accordance with the highest scientific, professional and ethical standards of its profession, and at all times will comply with all applicable federal and state statutes, regulations and published case law.

22. **COMPLIANCE WITH STATE CONTRACT AND FEDERAL REGULATIONS REQUIREMENTS.**

22.01 CONTRACTOR recognizes that COUNTY operates its behavioral health system under agreements with DHCS and DSH, and that under said agreements, the state imposes certain requirements on COUNTY and its subcontractors. CONTRACTOR agrees to abide by the state requirements.

22.02 CONTRACTOR shall comply with all policy letters issued by any and all Departments having authority over the services provided under this Agreement. These Departments may include but not limited to The Centers for Medicare & Medicaid Services ("CMS"), Department of Public Health, the Department of Social Services, and DHCS including Mental Health and Substance Use Disorder Services Division ("MHSUDS") Information Notices, MH Letters, DMH Information Notices, and ADP

Bulletins, which are available at the DHCS website, dhcs.ca.gov. These policy letters shall provide specific details of procedures when the detail is not covered in the Agreement but are determined to be necessary for performance under this Agreement. These policy letters are not intended to change the basis and general terms of the Agreement. Those policies and/or procedures modified or interpreted shall be incorporated into this Agreement and shall become the standard for compliance with the regulations. The provisions of this section are self-executing upon changes to the state and federal legislation and regulations by any event referenced above.

23. **COMPLIANCE WITH PASS-THROUGH GRANTS.** CONTRACTOR may be receiving federal award funds as payment for services rendered. Therefore, CONTRACTOR will be required to comply with OMB Circular A-133 requirements.

24. **LIMITATIONS ON USE OF FUNDS.** CONTRACTOR will comply with Section 202 of the Controlled Substance Act (21 USC 812) which limits the use of funds for promotion of legalization of controlled substances. None of the funds made available through this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in Schedule I of Section 202 of the Controlled Substance Act.

25. **CONTROL REQUIREMENTS.** CONTRACTOR shall establish and be familiar with written policies and procedures consistent with the following requirements. COUNTY shall annually monitor CONTRACTOR for compliance and adherence to CONTRACTOR's policies and procedures by requesting CONTRACTOR to attest to the completion of training of its staff and providers with annual copies of any policies and procedures not limited to those listed below.

25.01 Government Code, Title 2, Division 4, Part 2, Chapter 2, Article 1.7 relating to Federal Block Grant Funds, commencing at Section 16366.1.

25.02 Government Code, Title 5, Division 2, Part 1, Chapter 1, Article 7 relating to Federally Mandated Audits of Block Grant Funds Allocated to Local Agencies, commencing at Section 53130.

25.03 CFR, Title 2, relating to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commencing at Section 200.

25.04 CFR, Title 45, Subpart C relating to Block Grants Financial Management, commencing at Section 96.30.

26. **GENERAL PROVISIONS.**

26.01 **Restrictions on Salaries.** CONTRACTOR agrees that no part of any federal funds provided under this Agreement shall be used to pay the salary and wages of an individual at a rate in excess of Level I of the Executive Schedule which can be found at opm.gov. Federal funds used in violation of this restriction shall be subject to disallowance.

26.02 **Hatch Act.** CONTRACTOR agrees to comply with the provisions of the Hatch Act (Title 5 USC, Sections 1501-1508), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

26.03 **Debarment and Suspension.** CONTRACTOR will comply with applicable federal debarment and suspension regulations in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp.) and 12689 (3 CFR Part 1989), in addition to the requirements set forth in 42 CFR Part 1001.

26.04 **Trafficking Victims Protection Act of 2000.** CONTRACTOR shall comply with the Trafficking Victims Protection Act of 2000 (22 USC 7104(g)) as amended by section 1702 of Pub. L. 112-239.

27. **MODIFICATION.** Any provisions of this Agreement may be amended or modified from time to time by the written consent of both parties without, in any way, affecting the remainder of the Agreement. Both parties agree that if the applicable requirements of state and federal law regarding the programs administered by COUNTY or the services provided by CONTRACTOR change during the term of this Agreement, those revisions shall immediately go into effect to the extent required by the changed law.

28. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and interpreted under the laws of the State of California. Further, this Agreement shall be governed by, and construed in accordance with, all laws, regulations and obligations of COUNTY under its agreement with the state. Venue for all disputes shall be in the Madera County Superior Court or the United States District Court for the Eastern District of California, as applicable.

29. **ATTORNEY'S FEES AND COSTS.** Both parties agree that in the event of litigation brought to enforce performance of this Agreement or to seek damages for breach thereof, the losing party will pay the winning party's reasonable attorney's fees and costs, to be awarded and fixed by the court and to be taxed as costs and included in the judgment rendered.

30. **SEVERABILITY.** Unless material to this Agreement, any provision, clause, or part herein found to be illegal or unenforceable shall not affect the legality of any other provision, clause, or part, nor the Agreement itself.

31. **SECTION HEADINGS.** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions of this Agreement.

32. **ADMINISTRATION OF AGREEMENT.** This Agreement shall be administered for COUNTY by COUNTY Director of Behavioral Health Services.

33. **ENTIRE AGREEMENT.** This Agreement, the Master Contract Cover Sheet and any Exhibits and Attachments specified and incorporated into the Master Contract Cover Sheet shall constitute the entire agreement between CONTRACTOR and COUNTY with respect to the subject matter hereof and supersede in its entirety all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

34. **TIME OF THE ESSENCE.** Time shall be of the essence in the performance of this Agreement.

35. **MANDATORY USE.** This Agreement is adopted for mandatory use effective July 1, 2018. Any amendments to this Agreement shall be incorporated into then-existing agreements referencing this Master Contract No. 20.

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IN WITNESS WHEREOF the foregoing Agreement is executed on the date and year first above-written.

COUNTY OF MADERA

[Handwritten Signature]
Chairman, Board of Supervisors
07/10/2018

ATTEST:

[Handwritten Signature]
Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

Mary E.
Binning

Digitally signed by: Mary E. Binning
DN: CN = Mary E. Binning email =
mbinning@lozanosmith.com C = US O =
Lozano Smith
Date: 2018.06.19 15:58:34 -08'00'

By: _____

