

**AGREEMENT**

THIS AGREEMENT is made and entered into this 10th day of July, 2018, by and between the **COUNTY OF FRESNO**, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY," and **J. Melton & Associates**, a Sole Proprietor, whose address is 5562 W. River Bottom Ave, Fresno, CA 93722, hereinafter referred to as "CONTRACTOR".

**WITNESSETH:**

WHEREAS, COUNTY, through its Department of Behavioral Health (DBH) has a need for a Certification Review Hearing Officer to perform certification hearings at various psychiatric hospitals/acute psychiatric programs in the County of Fresno for adults, adolescents and children in order to comply with the Lanterman-Petris-Short Act as set forth in the State of California Welfare and Institutions Code (W&I Code); and

WHEREAS, W&I Code section 5256.1 precludes any employee of a COUNTY mental health program from serving in the capacity of a Certification Review Hearing Officer; and

WHEREAS, CONTRACTOR has the professional expertise necessary to perform as a Certification Review Hearing Officer for adults, adolescents and children, and is willing to perform in such capacity subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties hereto agree as follows:

**1. SERVICES**

CONTRACTOR shall perform all services and fulfill all responsibilities set forth in the "Scope of Work" identified in Exhibit A, attached hereto and by this reference incorporated herein.

CONTRACTOR shall possess and maintain the qualifications for Certification Review Hearing Officer for adults, adolescents and children, as required by W&I Code § 5256.1 and Section Fifteen (15) of this Agreement during the entire term of this Agreement. In addition, CONTRACTOR shall ensure that any and all of CONTRACTOR's employees, agents and sub-contractors performing services under this Agreement shall likewise maintain the required qualifications for Certification Hearing Review Officers as set forth in W&I Code section § 5256.1 and Section Fifteen (15) of this

1 Agreement.

2 **2. TERM**

3 The term of this Agreement shall be for a period of three (3) years, commencing on the  
4 1<sup>st</sup> day of July, 2018 through and including the 30<sup>th</sup> day of June, 2021.

5 This Agreement may be extended for two (2) additional consecutive twelve (12) month  
6 periods upon written approval of both parties no later than thirty (30) days prior to the first day of the  
7 next twelve (12) month extension period. The County's DBH Director or his or her designee is  
8 authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S  
9 satisfactory performance.

10 **3. TERMINATION**

11 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be  
12 provided hereunder, are contingent on the approval of funds by the appropriating government agency.  
13 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement  
14 terminated at any time by giving the CONTRACTOR thirty (30) days advance written notice.

15 B. Breach of Contract - The COUNTY may immediately suspend or terminate this  
16 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 17 1) An illegal or improper use of funds;
- 18 2) A failure to comply with any term of this Agreement;
- 19 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 20 4) Improperly performed service;
- 21 5) A failure to meet the statutory requirements of W&I Code section 5256.1.

22 In no event shall any payment by the COUNTY constitute a waiver by the  
23 COUNTY of any breach of this Agreement or any default which may then exist on the part of the  
24 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY  
25 with respect to the breach or default. The COUNTY shall have the right to demand of the  
26 CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this  
27 Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of  
28 this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand or, at the

COUNTY's option, such repayment shall be deducted from future payments owing to CONTRACTOR under this Agreement.

C. Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by either CONTRACTOR or COUNTY or COUNTY's Director, Department of Behavioral Health or designee, upon the giving of thirty (30) days advance written notice of an intention to terminate.

#### 4. COMPENSATION

COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation at the rate of Eighty-Five and No/100 Dollars (\$85.00) per Certification Review Hearing. Services are to be delivered to mental health clients (clients) who have been determined by COUNTY's DBH to be the responsibility of COUNTY, and for Community Behavioral Health Center (CBHC) mental health clients, that are conducted at each psychiatric unit at various psychiatric hospitals/acute psychiatric facilities in the County of Fresno which are designated as seventy-two (72) hour treatment and evaluation facilities. It is acknowledged and agreed between the parties that non-COUNTY inpatient facilities, other than CBHC, shall make separate arrangements with CONTRACTOR for compensation for services provided by CONTRACTOR within their inpatient facilities to mental health clients who are determined by COUNTY's Managed Care Division to not be the responsibility of COUNTY.

In no event shall all actual services performed under this Agreement be in excess of One Hundred Forty Thousand and No/100 Dollars (\$140,000.00) for each twelve (12) month period of this Agreement starting with July 1, 2018 through June 30, 2019. It is understood that all expenses incidental to CONTRACTOR's performance of services under this Agreement shall be borne by CONTRACTOR.

Payments by COUNTY shall be in arrears, for actual services provided during the preceding month, within forty-five (45) days of receipt, verification and approval of CONTRACTOR's invoices, accompanied by CONTRACTOR's monthly report as further described in Section Thirteen (13) of this Agreement. If CONTRACTOR should fail to comply with any provision of this Agreement, COUNTY shall be relieved of its obligation for further compensation.

1           **5.     INVOICING**

2           CONTRACTOR shall invoice COUNTY monthly by the 20<sup>th</sup> of each month for the prior  
3 month's actual services rendered to DBH-Invoices@co.fresno.ca.us. Each invoice submitted by  
4 CONTRACTOR shall include the facility at which the services were provided.

5           Hearing services under this Agreement will be provided for mental health clients  
6 determined by DBH to be the responsibility of the COUNTY and for clients at CBHC. CONTRACTOR  
7 understands that hearing services conducted at non-Fresno County facilities, except for CBHC, will not  
8 be paid for by COUNTY. Separate arrangements for compensation must be made between the  
9 CONTRACTOR and the non-Fresno County inpatient facilities, other than CBHC, for services provided to  
10 individuals who are not the responsibility of the COUNTY.

11           If an invoice is incorrect or is otherwise not in proper form or substance or if  
12 CONTRACTOR fails to provide data and/or reports, further described in Section fourteen (14) of this  
13 Agreement, as provided herein to the COUNTY to meet State requirements, COUNTY's DBH Director or  
14 designee shall have the right to withhold payment after five (5) days prior written notice to  
15 CONTRACTOR. CONTRACTOR agrees to continue to provide services for a period of ninety (90) days  
16 after notification of an incorrect or improper invoice(s), data and/or reports. If after said ninety (90) day  
17 period the invoice(s), data and/or reports are still not corrected to COUNTY's DBH satisfaction, it shall be  
18 deemed sufficient cause for the COUNTY to withhold monthly payments until compliance is established.  
19 If after said ninety (90) day period invoice(s), data and/or reports are still not received or corrected to  
20 COUNTY's DBH satisfaction, COUNTY's DBH Director or designee may elect to terminate this  
21 Agreement, pursuant to Section Three (3) of this Agreement.

22           In addition, CONTRACTOR shall submit all invoices, data and/or reports to COUNTY's  
23 DBH for services provided within ninety (90) days after each Agreement term expires or this  
24 Agreement is terminated. If invoices, data and/or reports are not submitted within ninety (90) days  
25 after each Agreement term expires or this Agreement is terminated, COUNTY's DBH shall have the  
26 right to deny payment on such invoices.

27           **6.     INDEPENDENT CONTRACTOR**

28

1 In performance of the work, duties, and obligations assumed by CONTRACTOR under  
2 this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of  
3 CONTRACTOR's officers, agents, and employees will at all times be acting and performing as an  
4 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,  
5 employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no  
6 right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its  
7 work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify  
8 that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

9 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the  
10 rules and regulations, if any, of governmental authorities having jurisdiction over matters which are  
11 directly or indirectly the subject of this Agreement.

12 Because of its status as an independent contractor, CONTRACTOR shall have absolutely  
13 no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be  
14 solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee  
15 benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all  
16 matters relating to payment of CONTRACTOR's employees, including compliance with Social Security,  
17 withholding, and all other regulations governing such matters. It is acknowledged that during the term of  
18 this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this  
19 Agreement.

20 **7. MODIFICATION**

21 Any matters of this Agreement may be modified from time to time by the written  
22 consent of all the parties without, in any way, affecting the remainder.

23 **8. NON-ASSIGNMENT**

24 Neither party shall assign, transfer or subcontract this Agreement nor their rights or  
25 duties under this Agreement without the prior written consent of the other party.

26 **9. HOLD-HARMLESS**

27 In accordance with W&I Code §5259.3(c), CONTRACTOR conducting the certification  
28 review hearing shall not be held civilly or criminally liable for any action by a person released at or

1 before the end of fourteen (14) days of intensive treatment pursuant to W&I Code §5250.

2 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's request,  
3 defend COUNTY, its officers, agents and employees from any and all costs and expenses including  
4 attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to COUNTY in  
5 connection with the negligent performance, or failure to perform, by CONTRACTOR, its officers, agents  
6 or employees under this Agreement, and from any and all costs and expenses, including attorney fees  
7 and court costs, damages, liabilities, claims and losses occurring or resulting to any person, firm or  
8 corporation who may be injured or damaged by the negligent performance, or failure to perform, of  
9 CONTRACTOR, their officers, agents or employees under this Agreement. CONTRACTOR further  
10 agrees to indemnify, save, hold harmless, and at COUNTY's request, defend COUNTY, its officers,  
11 agents and employees from any and all costs and expenses, including attorney fees and court costs,  
12 damages, liabilities, claims and losses occurring or resulting to COUNTY in the event that any person(s)  
13 employed or retained by CONTRACTOR to provide services pursuant this Agreement make claims that  
14 he/she/they are employees of the COUNTY by virtue of being employed or retained by CONTRACTOR.

15 COUNTY agrees to indemnify, save, hold harmless, and at CONTRACTOR's request,  
16 defend CONTRACTOR, its officers, agents and employees from any and all costs and expenses  
17 including attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to  
18 CONTRACTOR in connection with the negligent performance, or failure to perform, by COUNTY, its  
19 officers, agents or employees under this Agreement, and from any and all costs and expenses, including  
20 attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to any person,  
21 firm or corporation who may be injured or damaged by the negligent performance, or failure to perform, of  
22 COUNTY, their officers, agents or employees under this Agreement.

23 CONTRACTOR agrees to indemnify COUNTY for Federal and/or State of California audit  
24 exceptions resulting from noncompliance herein on the part of CONTRACTOR.

25 **10. INSURANCE**

26 Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or any  
27 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the following  
28 insurance policies throughout the term of this Agreement:

1           A.     Commercial General Liability

2                     Commercial General Liability Insurance with limits of not less than One Million  
3                     Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million  
4                     Dollars (\$3,000,000). This policy shall be issued on a per occurrence basis.  
5                     COUNTY may require specific coverage including completed operations, product  
6                     liability, contractual liability, Explosion, Collapse, and Underground (XCU), fire  
7                     legal liability or any other liability insurance deemed necessary because of the  
8                     nature of this Agreement.

9           B.     Automobile Liability

10                    Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto),  
11                    or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned).with  
12                    limits for bodily injury of not less than Five Hundred Thousand Dollars  
13                    (\$500,000) per person and with limits no less than One Million Dollars  
14                    (\$1,000,000) per accident for bodily injury and property damage. Coverage  
15                    should include owned, non-owned, and hired vehicles used in connection with  
16                    this Agreement.

17           C.     Professional Liability

18                    Professional Liability Insurance with limits of not less than One Million Dollars  
19                    (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual  
20                    aggregate. CONTRACTOR agrees that it shall maintain, at its sole expense, in  
21                    full force and effect for a period of three (3) years following the termination of  
22                    this Agreement, one or more policies of professional liability insurance with  
23                    limits of coverage as specified herein.

24           D.     Worker's Compensation

25                    A policy of worker's compensation insurance as may be required by the California  
26                    Labor Code.

27                    CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance  
28                    naming the County of Fresno, its officers, agents, and employees, individually and collectively, as  
29                    additional insured, but only insofar as the operations under this Agreement are concerned. Such  
30                    coverage for additional insured shall apply as primary insurance and any other insurance, or self-  
31                    insurance, maintained by the COUNTY, its officers, agents and employees shall be excess only and not  
32                    contributing with insurance provided under the CONTRACTOR's policies herein. This insurance shall not  
33                    be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

34                    Within thirty (30) days from the date CONTRACTOR executes this Agreement,

CONTRACTOR shall provide certificates of insurance and endorsements as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Department of Behavioral Health, 3133 N. Millbrook Ave., Fresno, California, 93703. Attention: Contracts Section – Certification Review Hearing Officer, stating that such insurance coverage's have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by the COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under the CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be with admitted insurers licensed to do business in the State of California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

#### **11. NON-DISCRIMINATION**

During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment, or recipient of services, because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age or gender, pursuant to all applicable State of California and Federal statutes and regulations.

#### **12. RECORDS**

CONTRACTOR shall maintain records documenting the number of hearings held at various psychiatric hospitals/acute psychiatric facilities in the County of Fresno that are designated as seventy-two (72) hour or twenty-three (23) hour fifty-nine minute treatment and evaluation facilities when the mental health clients have been determined by COUNTY's DBH, to be the responsibility of COUNTY.



1 This documentation shall indicate the assigned hearings officer's name, client's case number, date of  
2 hearing, location of hearing and number of hearings held by day and month. The disposition of each  
3 hearing shall also be listed.

4 CONTRACTOR shall maintain all above-mentioned records and submit them, when  
5 requested by DBH and/or DCFS. In addition, the client records shall become the property of the  
6 COUNTY upon expiration or termination of this Agreement.

### 7 **13. REPORTS**

8 CONTRACTOR shall maintain all required documentation, prepare monthly and quarterly  
9 reports containing the information listed under Section Twelve (12), above and submit them for DBH to  
10 the Department of Behavioral Health, Managed Care Division at 4409 E. Inyo Street, Fresno, CA 93702,  
11 Attn: Division Manager. CONTRACTOR shall also submit to COUNTY the quarterly report within thirty  
12 (30) days of the end of each quarter.

13 In addition, CONTRACTOR agrees to provide COUNTY with any reports which may be  
14 required by State and/or Federal agencies for compliance with this Agreement. At the expiration of each  
15 term of this Agreement or termination of the Agreement, COUNTY may request CONTRACTOR to  
16 participate in a written evaluation of its performance relative to this Agreement, in order for the COUNTY  
17 to evaluate CONTRACTOR's performance under this Agreement.

### 18 **14. COMPLAINTS**

19 CONTRACTOR shall log complaints and the disposition of all complaints from a client or a  
20 client's family. CONTRACTOR shall provide a copy of the detailed complaint log entries concerning  
21 COUNTY-sponsored clients to COUNTY at monthly intervals by the tenth (10<sup>th</sup>) day of the following  
22 month, in a format that is mutually agreed upon. In addition, CONTRACTOR shall provide details and  
23 attach documentation of each complaint with the log. CONTRACTOR shall post signs informing clients of  
24 their right to file a complaint or grievance. CONTRACTOR shall notify COUNTY of all incidents reportable  
25 to State licensing bodies that affect COUNTY clients within twenty-four (24) hours of receipt of a  
26 complaint.

27 Within ten (10) days after each incident or complaint affecting COUNTY clients,  
28 CONTRACTOR shall provide COUNTY with information relevant to the complaint, investigative details of

1 the complaint, the complaint and CONTRACTOR's disposition of, or corrective action taken to resolve the  
2 complaint. In addition, CONTRACTOR shall inform every client of their rights as set forth in Exhibit B,  
3 attached hereto and by this reference incorporated herein and made part of this Agreement.

4 CONTRACTOR shall file an incident report for all incidents involving clients, following the  
5 protocol and using the worksheet identified in Exhibit C, attached hereto and by this reference  
6 incorporated herein and made part of this Agreement.

7 **15. LICENSES**

8 CONTRACTOR warrants that it possesses all licenses and/or certificates required by  
9 local, State of California and/or Federal laws and regulations for the conduct of its business and shall  
10 operate its business in accordance with all applicable laws and regulations. CONTRACTOR further  
11 warrants that all of its personnel performing services under this Agreement shall be licensed and/or  
12 certified where required to lawfully perform their duties and shall maintain such licensure and/or  
13 certifications throughout the term of this Agreement. CONTRACTOR shall maintain copies of all  
14 licenses and/or certifications noted above and shall allow COUNTY to review these documents upon  
15 request.

16 **16. MONITORING**

17 CONTRACTOR agrees to extend to COUNTY's DBH and the State Department of Health  
18 Care Services, Mental Health Division, or their designees, the right to review and monitor records or  
19 procedures at any time, in regard to the hearings, as well as the operation of CONTRACTOR's hearing  
20 process, in order to ensure compliance with the terms and conditions of this Agreement and with all State  
21 and Federal mandates and regulations.

22 **17. COMPLIANCE – "CONTRACTOR CODE OF CONDUCT AND ETHICS"**

23 CONTRACTOR agrees to comply with the COUNTY's Contractor Code of Conduct and  
24 Ethics and the COUNTY's Compliance Program, identified in Exhibit D, attached hereto and by this  
25 reference incorporated herein. Within thirty (30) days of entering into this Agreement with the  
26 COUNTY, CONTRACTOR shall have all of CONTRACTOR's employees, agents and subcontractors  
27 providing services under this Agreement certify in writing, that he or she has received, read,  
28 understood, and shall abide by the Contractor Code of Conduct and Ethics. CONTRACTOR shall

1 ensure that within thirty (30) days of hire, all new employees, agents and subcontractors providing  
2 services under this Agreement shall certify in writing that he or she has received, read, understood,  
3 and shall abide by the Contractor Code of Conduct and Ethics by completing "Contractor  
4 Acknowledgement and Agreement", identified in Exhibit D. CONTRACTOR understands that the  
5 promotion of and adherence to the Code of Conduct is an element in evaluating the performance of  
6 CONTRACTOR and its employees, agents and subcontractors.

7           Within thirty (30) days of entering into this Agreement, and annually thereafter, all  
8 employees, agents and subcontractors providing services under this Agreement shall complete  
9 general compliance training and appropriate employees, agents and subcontractors shall complete  
10 documentation and billing or billing/reimbursement training. All new employees, agents and  
11 subcontractors shall attend the appropriate training within 30 days of hire. Each individual who is  
12 required to attend training shall certify, in writing that he or she has received the required training. The  
13 certification shall specify the type of training received and the date received. The certification shall be  
14 provided to the COUNTY's Compliance Officer at 3133 N. Millbrook Avenue, Fresno, California 93703.

15           **18.   ASSURANCES**

16           In entering into this Agreement, CONTRACTOR certifies that it is not currently  
17 excluded, suspended, debarred, or otherwise ineligible to participate in the Federal Health Care  
18 Programs: that it has not been convicted of a criminal offense related to the provision of health care  
19 items or services; nor has it been reinstated to participation in the Federal Health Care Programs after  
20 a period of exclusion, suspension, debarment, or ineligibility. If COUNTY learns, subsequent to  
21 entering into a contract, that CONTRACTOR is ineligible on these grounds, COUNTY will remove  
22 CONTRACTOR from responsibility for, or involvement with, COUNTY's business operations related to  
23 the Federal Health Care Programs and shall remove such CONTRACTOR from any position in which  
24 CONTRACTOR's compensation, or the items or services rendered, ordered or prescribed by  
25 CONTRACTOR may be paid in whole or part, directly or indirectly, by Federal Health Care Programs  
26 or otherwise with Federal Funds at least until such time as CONTRACTOR is reinstated into  
27 participation in the Federal Health Care Programs.

28           A.       If COUNTY has notice that CONTRACTOR has been charged with a criminal

1 offense related to any Federal Health Care Program, or is proposed for exclusion during the term on  
2 any contract, CONTRACTOR and COUNTY shall take all appropriate actions to ensure the accuracy  
3 of any claims submitted to any Federal Health Care Program. At its discretion, given such  
4 circumstances, COUNTY may request that CONTRACTOR cease providing services until resolution  
5 of the charges or the proposed exclusion.

6           B.       CONTRACTOR agrees that all potential new employees of CONTRACTOR or  
7 subcontractors of CONTRACTOR who, in each case, are expected to perform professional services  
8 under this Agreement, will be queried as to whether (1) they are now or ever have been excluded,  
9 suspended, debarred, or otherwise ineligible to participate in the Federal Health Care Programs; (2)  
10 they have been convicted of a criminal offense related to the provision of health care items or  
11 services; and or (3) they have been reinstated to participation in the Federal Health Care Programs  
12 after a period of exclusion, suspension, debarment, or ineligibility.

13                   1.       In the event the potential employee or subcontractor informs  
14 CONTRACTOR that he or she is excluded, suspended, debarred or otherwise ineligible, or has been  
15 convicted of a criminal offense relating to the provision of health care services, and CONTRACTOR  
16 hires or engages such potential employee or subcontractor, CONTRACTOR will ensure that said  
17 employee or subcontractor does no work, either directly or indirectly relating to services provided to  
18 COUNTY.

19                   2.       Notwithstanding the above, COUNTY at its discretion may  
20 terminate this Agreement in accordance with Section Three (3) of this Agreement, or require adequate  
21 assurance (as defined by COUNTY) that no excluded, suspended or otherwise ineligible employee of  
22 CONTRACTOR will perform work, either directly or indirectly, relating to services provided to  
23 COUNTY. Such demand for adequate assurance shall be effective upon a time frame to be  
24 determined by COUNTY to protect the interests of COUNTY consumers.

25           C.       CONTRACTOR shall verify (by asking the applicable employees and  
26 subcontractors) that all current employees and existing subcontractors who, in each case, are  
27 expected to perform professional services under this Agreement (1) are not currently excluded,  
28 suspended, debarred, or otherwise ineligible to participate in the Federal Health Care Programs; (2)

1 have not been convicted of a criminal offense related to the provision of health care items or services;  
2 and (3) have not been reinstated to participation in the Federal Health Care Program after a period of  
3 exclusion, suspension, debarment, or ineligibility. In the event any existing employee or subcontractor  
4 informs CONTRACTOR that he or she is excluded, suspended, debarred or otherwise ineligible to  
5 participate in the Federal Health Care Programs, or has been convicted of a criminal offense relating  
6 to the provision of health care services, CONTRACTOR will ensure that said employee or  
7 subcontractor does no work, either direct or indirect, relating to services provided to COUNTY.

8                   1.       CONTRACTOR agrees to notify COUNTY immediately during  
9 the term of this Agreement whenever CONTRACTOR learns that an employee or subcontractor who,  
10 in each case, is providing professional services under this Agreement is excluded, suspended,  
11 debarred or otherwise ineligible to participate in the Federal Health Care Programs, or is convicted of  
12 a criminal offense relating to the provision of health care services.

13                   2.       Notwithstanding the above, COUNTY at its discretion may  
14 terminate this Agreement in accordance with the Termination Section of this Agreement, or require  
15 adequate assurance (as defined by COUNTY) that no excluded, suspended or otherwise ineligible  
16 employee of CONTRACTOR will perform work, either directly or indirectly, relating to services  
17 provided to COUNTY. Such demand for adequate assurance shall be effective upon a time frame to  
18 be determined by COUNTY to protect the interests of COUNTY consumers.

19                   D.       CONTRACTOR agrees to cooperate fully with any reasonable requests for  
20 information from COUNTY which may be necessary to complete any internal or external audits relating to  
21 CONTRACTOR's compliance with the provisions of this Section.

22                   E.       CONTRACTOR agrees to reimburse COUNTY for the entire cost of any penalty  
23 imposed upon COUNTY by the Federal Government as a result of CONTRACTOR's violation of  
24 CONTRACTOR's obligations as described in this Section.

25                   **19.    COMPLIANCE WITH STATE REQUIREMENTS**

26                   CONTRACTOR recognizes that COUNTY operates its Mental Health programs under  
27 an agreement with the State of California Department of Health Care Services, and that under said  
28 agreement the State imposes certain requirements on the COUNTY and its subcontractors.

CONTRACTOR shall adhere to all State of California requirements, including those identified in Exhibit E, attached hereto and by this reference incorporated herein.

**20. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR changes its status to operate as a corporation.

Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Exhibit F), attached hereto and by this reference incorporated herein and made part of this Agreement, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

**21. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

A. The parties to this Agreement shall be in strict conformance with all applicable Federal and State of California laws and regulations, including but not limited to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations, including, but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient information and the Genetic Information Nondiscrimination Act (GINA) of 2008 regarding the confidentiality of genetic information.

Except as otherwise provided in this Agreement, CONTRACTOR, as a Business Associate of COUNTY, may use or disclose Protected Health Information (PHI) to perform functions, activities or services for or on behalf of COUNTY, as specified in this Agreement, provided that such

1 use or disclosure shall not violate the HIPAA, USC 1320d *et seq.* The uses and disclosures of PHI  
2 may not be more expansive than those applicable to COUNTY, as the “Covered Entity” under the  
3 HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for management, administrative  
4 or legal responsibilities of the Business Associate.

5 B. CONTRACTOR, including its subcontractors and employees, shall protect, from  
6 unauthorized access, use, or disclosure of names and other identifying information, including genetic  
7 information, concerning persons receiving services pursuant to this Agreement, except where  
8 permitted in order to carry out data aggregation purposes for health care operations [45 CFR Sections  
9 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]. This pertains to any and all persons  
10 receiving services pursuant to a COUNTY funded program. This requirement applies to electronic  
11 PHI. CONTRACTOR shall not use such identifying information or genetic information for any purpose  
12 other than carrying out CONTRACTOR’s obligations under this Agreement.

13 C. CONTRACTOR, including its subcontractors and employees, shall not disclose  
14 any such identifying information or genetic information to any person or entity, except as otherwise  
15 specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law,  
16 required by the Secretary, or authorized by the client/patient in writing. In using or disclosing PHI that  
17 is permitted by this Agreement or authorized by law, CONTRACTOR shall make reasonable efforts to  
18 limit PHI to the minimum necessary to accomplish intended purpose of use, disclosure or request.

19 D. For purposes of the above sections, identifying information shall include, but not  
20 be limited to name, identifying number, symbol, or other identifying particular assigned to the  
21 individual, such as finger or voice print, or a photograph.

22 E. For purposes of the above sections, genetic information shall include genetic  
23 tests of family members of an individual or individual, manifestation of disease or disorder of family  
24 members of an individual, or any request for or receipt of, genetic services by individual or family  
25 members. Family member means a dependent or any person who is first, second, third, or fourth  
26 degree relative.

27 F. CONTRACTOR shall provide access, at the request of COUNTY, and in the  
28 time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR

1 Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR  
2 Section 164.524 regarding access by individuals to their PHI. With respect to individual requests,  
3 access shall be provided within thirty (30) days from request. Access may be extended if  
4 CONTRACTOR cannot provide access and provide individual with the reasons for the delay and the  
5 date when access may be granted. PHI shall be provided in the form and format requested by the  
6 individual or COUNTY.

7 CONTRACTOR shall make any amendment(s) to PHI in a designated record  
8 set at the request of COUNTY, or individual, and in the time and manner designated by COUNTY in  
9 accordance with 45 CFR Section 164.526.

10 CONTRACTOR shall provide to COUNTY or to an individual, in a time and  
11 manner designated by COUNTY, information collected in accordance with 45 CFR Section 164.528,  
12 to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in  
13 accordance with 45 CFR Section 164.528.

14 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or  
15 reasonable belief that there has been unauthorized access, viewing, use, disclosure, security incident,  
16 or breach of unsecured PHI not permitted by this Agreement of which it becomes aware, immediately  
17 and without reasonable delay and in no case later than two (2) business days of discovery.  
18 Immediate notification shall be made to COUNTY's Information Security Officer and Privacy Officer  
19 and COUNTY's DBH HIPAA Representative, within two (2) business days of discovery. The  
20 notification shall include, to the extent possible, the identification of each individual whose unsecured  
21 PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or  
22 breached.

23 CONTRACTOR shall take prompt corrective action to cure any deficiencies and  
24 any action pertaining to such unauthorized disclosure required by applicable Federal and State Laws  
25 and regulations. CONTRACTOR shall investigate such breach and is responsible for all notifications  
26 required by law and regulation or deemed necessary by COUNTY and shall provide a written report of  
27 the investigation and reporting required to COUNTY's Information Security Officer and Privacy Officer  
28 and COUNTY's DBH HIPAA Representative. This written investigation and description of any



reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the breach to the addresses below:

County of Fresno  
Department of Behavioral Health  
HIPAA Representative  
(559) 600-6798  
3147 N. Millbrook Ave  
Fresno, CA 93703

County of Fresno  
Dept. of Public Health  
Privacy Officer  
(559) 600-6405  
(559) 600-6439  
P.O. Box 11867  
Fresno, CA 93721

County of Fresno  
Information Technology Services  
Information Security Officer  
(559) 600-5800  
2048 N. Fine Ave  
Fresno, CA 93727

H. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the requirements set forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, available to the United States Department of Health and Human Services (Secretary) upon demand.

CONTRACTOR shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the CONTRACTOR's normal business hours, however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to CONTRACTOR and in possession of a Subcontractor, it must certify efforts to obtain the information to the Secretary.

I. Safeguards

CONTRACTOR shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement. CONTRACTOR shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidential, integrity and availability of electronic PHI. CONTRACTOR shall

1 develop and maintain a written information privacy and security program that includes administrative,  
2 technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's  
3 operations and the nature and scope of its activities. Upon COUNTY's request, CONTRACTOR shall  
4 provide COUNTY with information concerning such safeguards.

5 CONTRACTOR shall implement strong access controls and other security  
6 safeguards and precautions in order to restrict logical and physical access to confidential, personal  
7 (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include  
8 the following administrative and technical password controls for all systems used to process or store  
9 confidential, personal, or sensitive data:

10 1. Passwords must not be:

11 a. Shared or written down where they are accessible or  
12 recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible  
13 in a work area;

14 b. A dictionary word; or

15 c. Stored in clear text

16 2. Passwords must be:

17 a. Eight (8) characters or more in length;

18 b. Changed every ninety (90) days;

19 c. Changed immediately if revealed or compromised; and

20 d. Composed of characters from at least three of the following four

21 groups from the standard keyboard:

22 1) Upper case letters (A-Z);

23 2) Lowercase letters (a-z);

24 3) Arabic numerals (0 through 9); and

25 4) Non-alphanumeric characters (punctuation symbols).

26 CONTRACTOR shall implement the following security controls on each  
27 workstation or portable computing device (e.g., laptop computer) containing confidential,  
28 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.

CONTRACTOR shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

CONTRACTOR shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. CONTRACTOR must apply appropriate sanctions against its employees who fail to comply with these safeguards. CONTRACTOR must adopt procedures for terminating access to PHI when employment of employee ends.

J. Mitigation of Harmful Effects

CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is suspected or known to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or breach of PHI by CONTRACTOR or its subcontractors in violation of the requirements of these provisions. CONTRACTOR must document suspected or known harmful effects and the outcome.

K. CONTRACTOR's Subcontractors

CONTRACTOR shall ensure that any of its contractors, including subcontractors, if applicable, to whom CONTRACTOR provides PHI received from or created or received by CONTRACTOR on behalf of COUNTY, agree to the same restrictions, safeguards, and conditions that apply to CONTRACTOR with respect to such PHI and to incorporate, when applicable, the relevant provisions of these provisions into each subcontract or sub-award to such agents or subcontractors.

L. Employee Training and Discipline

CONTRACTOR shall train and use reasonable measures to ensure compliance

1 with the requirements of these provisions by employees who assist in the performance of functions or  
2 activities on behalf of COUNTY under this Agreement and use or disclose PHI and discipline such  
3 employees who intentionally violate any provisions of these provisions, including termination of  
4 employment.

5 M. Termination for Cause

6 Upon COUNTY's knowledge of a material breach of these provisions by  
7 CONTRACTOR, COUNTY shall either:

8 1. Provide an opportunity for CONTRACTOR to cure the breach or end the  
9 violation and terminate this Agreement if CONTRACTOR does not cure the breach or end the violation  
10 within the time specified by COUNTY; or

11 2. Immediately terminate this Agreement if CONTRACTOR has breached a  
12 material term of these provisions and cure is not possible.

13 3. If neither cure nor termination is feasible, the COUNTY Privacy Officer  
14 shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

15 N. Judicial or Administrative Proceedings

16 COUNTY may terminate this Agreement in accordance with the terms and  
17 conditions of this Agreement as written hereinabove, if: (1) CONTRACTOR is found guilty in a  
18 criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a  
19 finding or stipulation that the CONTRACTOR has violated a privacy or security standard or  
20 requirement of the HITECH Act, HIPAA or other security or privacy laws in an administrative or civil  
21 proceeding in which the CONTRACTOR is a party.

22 O. Effect of Termination

23 Upon termination or expiration of this Agreement for any reason,  
24 CONTRACTOR shall return or destroy all PHI received from COUNTY (or created or received by  
25 CONTRACTOR on behalf of COUNTY) that CONTRACTOR still maintains in any form, and shall  
26 retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend  
27 the protections of these provisions to such information, and limit further use of such PHI to those  
28 purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI

1 that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR. If  
2 CONTRACTOR destroys the PHI data, a certification of date and time of destruction shall be provided  
3 to the COUNTY by CONTRACTOR.

4 P. Disclaimer

5 COUNTY makes no warranty or representation that compliance by  
6 CONTRACTOR with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be  
7 adequate or satisfactory for CONTRACTOR's own purposes or that any information in  
8 CONTRACTOR's possession or control, or transmitted or received by CONTRACTOR, is or will be  
9 secure from unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR is solely  
10 responsible for all decisions made by CONTRACTOR regarding the safeguarding of PHI.

11 Q. Amendment

12 The parties acknowledge that Federal and State laws relating to electronic data  
13 security and privacy are rapidly evolving and that amendment of these provisions may be required to  
14 provide for procedures to ensure compliance with such developments. The parties specifically agree  
15 to take such action as is necessary to amend this agreement in order to implement the standards and  
16 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to  
17 the security or privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days written  
18 notice in the event that CONTRACTOR does not enter into an amendment providing assurances  
19 regarding the safeguarding of PHI that COUNTY in its sole discretion deems sufficient to satisfy the  
20 standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

21 R. No Third-Party Beneficiaries

22 Nothing express or implied in the terms and conditions of these provisions is  
23 intended to confer, nor shall anything herein confer, upon any person other than COUNTY or  
24 CONTRACTOR and their respective successors or assignees, any rights, remedies, obligations or  
25 liabilities whatsoever.

26 S. Interpretation

27 The terms and conditions in these provisions shall be interpreted as broadly as  
28 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws.

1 The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved  
2 in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

3 T. Regulatory References

4 A reference in the terms and conditions of these provisions to a section in the  
5 HIPAA regulations means the section as in effect or as amended.

6 U. Survival

7 The respective rights and obligations of CONTRACTOR as stated in this  
8 Section shall survive the termination or expiration of this Agreement.

9 V. No Waiver of Obligations

10 No change, waiver or discharge of any liability or obligation hereunder on any  
11 one or more occasions shall be deemed a waiver of performance of any continuing or other obligation,  
12 or shall prohibit enforcement of any obligation on any other occasion.

13 **22. DATA SECURITY**

14 For the purpose of preventing the potential loss, misappropriation or inadvertent  
15 access, viewing, use or disclosure of COUNTY data including sensitive or personal client information;  
16 abuse of COUNTY resources; and/or disruption to COUNTY operations, individuals and/or agencies  
17 that enter into a contractual relationship with the COUNTY for the purpose of providing services under  
18 this Agreement must employ adequate data security measures to protect the confidential information  
19 provided to CONTRACTOR by the COUNTY, including but not limited to the following:

20 A. CONTRACTOR-Owned Mobile, Wireless, or Handheld Devices

21 CONTRACTOR may not connect to COUNTY networks via personally-owned  
22 mobile, wireless or handheld devices, unless the following conditions are met:

- 23 1) CONTRACTOR has received authorization by COUNTY for telecommuting  
24 purposes;  
25 2) Current virus protection software is in place;  
26 3) Mobile device has the remote wipe feature enabled/ and  
27 4) A secure connection is used.

28 B. CONTRACTOR-Owned Computers or Computer Peripherals

1 CONTRACTOR may not bring CONTRACTOR-owned computers or computer peripherals into the  
2 COUNTY for use without prior authorization from the COUNTY's Chief Information Officer, and/or  
3 designee(s), including but not limited to mobile storage devices. If data is approved to be transferred,  
4 data must be stored on a secure server approved by the COUNTY and transferred by means of a  
5 Virtual Private Network (VPN) connection, or another type of secure connection. Said data must be  
6 encrypted.

7 C. COUNTY-Owned Computer Equipment

8 CONTRACTOR may not use COUNTY computers or computer peripherals on non-COUNTY  
9 premises without prior authorization from the COUNTY's Chief Information Officer, and/or designee(s).

10 D. CONTRACTOR may not store COUNTY's private, confidential or sensitive data  
11 on any hard-disk drive, portable storage device, or remote storage installation unless encrypted.

12 E. CONTRACTOR shall be responsible to employ strict controls to ensure the  
13 integrity and security of COUNTY's confidential information and to prevent unauthorized access,  
14 viewing, use or disclosure of data maintained in computer files, program documentation, data  
15 processing systems, data files and data processing equipment which stores or processes COUNTY  
16 data internally and externally.

17 F. Confidential client information transmitted to one party by the other by means of  
18 electronic transmissions must be encrypted according to Advanced Encryption Standards (AES) of  
19 128 BIT or higher. Additionally, a password or pass phrase must be utilized.

20 G. CONTRACTOR is responsible to immediately notify COUNTY of any violations,  
21 breaches or potential breaches of security related to COUNTY's confidential information, data  
22 maintained in computer files, program documentation, data processing systems, data files and data  
23 processing equipment which stores or processes COUNTY data internally or externally.

24 H. COUNTY shall provide oversight to CONTRACTOR's response to all incidents  
25 arising from a possible breach of security related to COUNTY's confidential client information provided  
26 to CONTRACTOR. CONTRACTOR will be responsible to issue any notification to affected individuals  
27 as required by law or as deemed necessary by COUNTY in its sole discretion. CONTRACTOR will be  
28 responsible for all costs incurred as a result of providing the required notification.

1           **23.    DISCLOSURE – CRIMINAL HISTORY AND CIVIL ACTIONS**

2           CONTRACTOR is required to disclose if any of the following conditions apply to them,  
3 their owners, officers, corporate managers and partners (hereinafter collectively referred to as  
4 “CONTRACTOR”):

5           A.       Within the three-year period preceding the Agreement award, they have been  
6 convicted of, or had a civil judgment rendered against them for:

- 7                   1. Fraud or a criminal offense in connection with obtaining, attempting to
- 8                   obtain, or performing a public (federal, state, or local) transaction or
- 9                   contract under a public transaction;
- 10                  2. Violation of a federal or state antitrust statute;
- 11                  3. Embezzlement, theft, forgery, bribery, falsification, or destruction of
- 12                   records; or
- 13                  4. False statements or receipt of stolen property.

14          B.       Within a three-year period preceding their Agreement award, they have had a  
15 public transaction (federal, state, or local) terminated for cause or default.

16           Disclosure of the above information will not automatically eliminate  
17 CONTRACTOR from further business consideration. The information will be considered as part of  
18 the determination of whether to continue and/or renew this Agreement and any additional  
19 information or explanation that a CONTRACTOR elects to submit with the disclosed information will  
20 be considered. If it is later determined that the CONTRACTOR failed to disclose required  
21 information, any contract awarded to such CONTRACTOR may be immediately voided and  
22 terminated for material failure to comply with the terms and conditions of the award.

23           CONTRACTOR must sign a “Certification Regarding Debarment, Suspension,  
24 and Other Responsibility Matters- Primary Covered Transactions” in the form set forth in Exhibit G,  
25 attached hereto and by this reference incorporated herein and made part of this Agreement.  
26 Additionally, CONTRACTOR must immediately advise the COUNTY’s DBH in writing if, during the  
27 term of this Agreement: (1) CONTRACTOR becomes suspended, debarred, excluded or ineligible for  
28 participation in federal or state funded programs or from receiving federal funds as listed in the



1 excluded parties' list system (<http://www.epls.gov>); or (2) any of the above listed conditions become  
2 applicable to CONTRACTOR. CONTRACTOR shall indemnify, defend and hold the COUNTY  
3 harmless for any loss or damage resulting from a conviction, debarment, exclusion, ineligibility or  
4 other matter listed in the signed Certification Regarding Debarment, Suspension, and Other  
5 Responsibility Matters.

6 **24. PUBLICITY PROHIBITION**

7 None of the funds, materials, property or services provided directly or indirectly under  
8 this Agreement shall be used for CONTRACTOR's advertising, fundraising, or publicity (i.e.,  
9 purchasing tickets/tables, silent auction donations, etc.) for the purpose of self-promotion.

10 Notwithstanding the above, publicity of the services described in Section One (1) of this Agreement  
11 shall be allowed as necessary to raise public awareness about the availability of such specific services  
12 when approved in advance by COUNTY's DBH Director or designee for such items as written/printed  
13 materials, the use of media (i.e., radio, television, newspapers) and any other related expense(s).

14 **25. AUDITS AND INSPECTIONS**

15 The CONTRACTOR shall at any time during business hours, and as often as the  
16 COUNTY may deem necessary, make available to the COUNTY for examination all of its records and  
17 data with respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request  
18 by the COUNTY, permit the COUNTY to audit and inspect all such records and data necessary to  
19 ensure CONTRACTOR's compliance with the terms of this Agreement.

20 If this Agreement exceeds Ten Thousand and No/100 Dollars (\$10,000.00),  
21 CONTRACTOR shall be subject to the examination and audit of the State of California Auditor  
22 General for a period of three (3) years after final payment under contract (California Government Code  
23 section 8546.7).

24 **26. NOTICES**

25 The persons having authority to give and receive notices under this Agreement and their  
26 addresses include the following:

27 COUNTY

28 Director, Fresno County

CONTRACTOR

J. Melton & Associates

1 Department of Behavioral Health  
2 3133 N. Millbrook Ave  
3 Fresno, CA 93702

5562 W. River Bottom Ave.  
Fresno, CA 93722  
(559) 259-3893

4 All notices between the COUNTY and CONTRACTOR provided for or permitted under  
5 this Agreement must be in writing and delivered either by personal service, by first-class United States  
6 mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice  
7 delivered by personal service is effective upon service to the recipient. A notice delivered by first-class  
8 United States mail is effective three COUNTY business days after deposit in the United States mail,  
9 postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier  
10 service is effective one COUNTY business day after deposit with the overnight commercial courier  
11 service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the  
12 recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is  
13 completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery  
14 shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the  
15 sender maintains a machine record of the completed transmission. For all claims arising out of or related  
16 to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation  
17 requirements or procedures provided by law, including but not limited to the Government Claims Act  
18 (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

19 **27. GOVERNING LAW**

20 The parties agree that, for the purposes of venue, performance under this Agreement is to  
21 be in Fresno County, California.

22 The rights and obligations of the parties and all interpretation and performance of this  
23 Agreement shall be governed in all respects by the laws of the State of California.

24 **28. ENTIRE AGREEMENT**

25 This Agreement including all attached exhibits constitutes the entire Agreement  
26 between the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes  
27 all previous agreement negotiations, proposals, commitments, writings, advertisements, publications  
28 and understandings of any nature whatsoever unless expressly included in this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and  
2 year first hereinabove written.

3  
4 **CONTRACTOR**  
5 **J. Melton & Associates**

6 By: Joseph V. Melton

7  
8 Print Name: Joseph V. Melton

9 Title: Chief Executive Officer

10 President or Chief Executive Officer  
11 Or any Vice President

12 By: Janice Melton

13  
14 Print Name: Janice Melton

15 Title: Chief Financial Officer

16 Secretary of Corporation, or

17 Any Assistant Secretary, or  
18 Chief Financial Officer, or  
19 Any Assistant Treasurer

20 Mailing Address:  
21 5562 W. River Bottom Ave.  
22 Fresno, CA 93722  
23 Phone No. (559) 259-3893  
24 Contact: Chief Executive Officer

25 **FOR ACCOUNTING USE ONLY:**

26 Fund/Subclass: 0001/10000  
27 Organization: 5630  
28 Account/Program: 7295/0

**COUNTY OF FRESNO**

By: Sal Quintero

Sal Quintero  
Chairperson of the Board of Supervisors  
of the County of Fresno

**ATTEST:**

Bernice E. Seidel,  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By: Susan Bishop  
Deputy

Date: 7-10-18

## Certification Hearing Review Officer

### Scope of Work

**ORGANIZATION:** J. Melton & Associates

**ADDRESS:** 5562 W. River Bottom Ave, Fresno, CA 93722

**SERVICES FOR:** Conduct certification Review Hearings for adults and children involuntarily detained as required by the Lanterman-Petris-Short Act.

**CONTRACT PERIOD:** July 1, 2018 – June 30, 2023

**CONTRACT AMOUNT:** \$140,000.00 for each fiscal year

**TARGET POPULATION:** Adults and children involuntarily detained pursuant to the provisions of the Lanterman-Petris-Short Act of the California Welfare & Institutions Code.

**SERVICES:** Conduct Certification Hearings

1. The primary activity of the Certification Hearing Review Officer (CONTRACTOR) is to conduct hearings of those adults, adolescents, or children involuntarily detained due to being gravely disabled and/or danger to self or others because of mental illness and who have been certified for additional involuntary treatment.
2. Hearings shall be held in the manner as prescribed by section 5256 through and including 5270.15 of the California Welfare and Institutions Code, Division 5.
3. Certification Review Hearings shall be held within four (4) days of the initial certification for additional involuntary hold of the person certified, unless postponed by the request of the person or his/her attorney or advocate. Additional certification review hearings will be held within four (4) days of the date on which the consumer is certified for a thirty (30) day period of intensive treatment (California Welfare and Institutions Code § 5270.15).
4. Hearings shall be held at various psychiatric hospitals/acute psychiatric programs in the County of Fresno that are designated as Seventy-Two (72) hour treatment and evaluation facilities.

5. CONTRACTOR shall maintain all required documentation and shall submit any required documentation in compliance with all applicable State and Federal confidentiality laws in the manner determined by the COUNTY.
6. CONTRACTOR will provide approximately one hundred and twenty-three (123) hearings per month although no minimum is guaranteed.
7. COUNTY will be responsible to provide for and compensate the CONTRACTOR for all hearings performed in accordance with Welfare and Institutions Code sections 5250 through 5270.35 at a location/space that allows for confidentiality and is compatible with and is least disruptive to the treatment being provided to the Beneficiary or Recipient.
8. Review hearings will be conducted each week on Tuesday and Friday or on other days of the week as may be necessary to complete said hearings within State required timelines. If a hearing falls on a COUNTY observed holiday, the CONTRACTOR will issue notification to the DBH on the alternate date chosen. Depending on the number of hearings scheduled for the day and the complexity of each hearing, the time taken to complete all hearings scheduled may extend past the customary 8:00 a.m. – 5:00 p.m. business day. Each Sterling Hearing takes approximately 25 minutes to complete.

**PROJECTED OUTCOMES:** Provide approximately one hundred and twenty-three (123) review hearings per month.

## **Fresno County Mental Health Plan**

### **Grievances**

Fresno County Mental Health Plan (MHP) provides beneficiaries with a grievance and appeal process and an expedited appeal process to resolve grievances and disputes at the earliest and the lowest possible level.

Title 9 of the California Code of Regulations requires that the MHP and its fee-for-service providers give verbal and written information to Medi-Cal beneficiaries regarding the following:

- How to access specialty mental health services
- How to file a grievance about services
- How to file for a State Fair Hearing

The MHP has developed a Consumer Guide, a beneficiary rights poster, a grievance form, an appeal form, and Request for Change of Provider Form. All of these beneficiary materials must be posted in prominent locations where Medi-Cal beneficiaries receive outpatient specialty mental health services, including the waiting rooms of providers' offices of service.

Please note that all fee-for-service providers and contract agencies are required to give their clients copies of all current beneficiary information annually at the time their treatment plans are updated and at intake.

Beneficiaries have the right to use the grievance and/or appeal process without any penalty, change in mental health services, or any form of retaliation. All Medi-Cal beneficiaries can file an appeal or state hearing.

Grievances and appeals forms and self addressed envelopes must be available for beneficiaries to pick up at all provider sites without having to make a verbal or written request. Forms can be sent to the following address:

Fresno County Mental Health Plan  
P.O. Box 45003  
Fresno, CA 93718-9886  
(800) 654-3937 (for more information)  
(559) 488-3055 (TTY)

### **Provider Problem Resolution and Appeals Process**

The MHP uses a simple, informal procedure in identifying and resolving provider concerns and problems regarding payment authorization issues, other complaints and concerns.

Informal provider problem resolution process – the provider may first speak to a Provider Relations Specialist (PRS) regarding his or her complaint or concern. The PRS will attempt to settle the complaint or concern with the provider. If the attempt is unsuccessful and the provider chooses to forego the informal grievance process, the provider will be advised to file a written complaint to the MHP address (listed above).

Formal provider appeal process – the provider has the right to access the provider appeal process at any time before, during, or after the provider problem resolution process has begun, when the complaint concerns a denied or modified request for MHP payment authorization, or the process or payment of a provider's claim to the MHP.

Payment authorization issues – the provider may appeal a denied or modified request for payment authorization or a dispute with the MHP regarding the processing or payment of a provider's claim to the MHP. The written appeal must be submitted to the MHP within 90 calendar days of the date of the receipt of the non-approval of payment.

The MHP shall have 60 calendar days from its receipt of the appeal to inform the provider in writing of the decision, including a statement of the reasons for the decision that addresses each issue raised by the provider, and any action required by the provider to implement the decision.

If the appeal concerns a denial or modification of payment authorization request, the MHP utilizes a Managed Care staff who was not involved in the initial denial or modification decision to determine the appeal decision.

If the Managed Care staff reverses the appealed decision, the provider will be asked to submit a revised request for payment within 30 calendar days of receipt of the decision.

Other complaints – if there are other issues or complaints, which are not related to payment authorization issues, providers are encouraged to send a letter of complaint to the MHP. The provider will receive a written response from the MHP within 60 calendar days of receipt of the complaint. The decision rendered by the MHP is final.

## **FRESNO COUNTY MENTAL HEALTH PLAN**

### **GRIEVANCES AND INCIDENT REPORTING**

#### **PROTOCOL FOR COMPLETION OF INCIDENT REPORT**

- The Incident Report must be completed for all incidents involving clients. The staff person who becomes aware of the incident completes this form, and the supervisor co-signs it.
- When more than one client is involved in an incident, a separate form must be completed for each client.

Where the forms should be sent - within 24 hours from the time of the incident

- Incident Report should be sent to:

DBH Program Supervisor



## INCIDENT REPORT WORKSHEET

When did this happen? (date/time) \_\_\_\_\_ Where did this happen? \_\_\_\_\_

Name/DMH # \_\_\_\_\_

### 1. Background information of the incident:

### 2. Method of investigation: (chart review, face-to-face interview, etc.)

Who was affected? (If other than consumer) \_\_\_\_\_

List key people involved. (witnesses, visitors, physicians, employees)

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### 3. Preliminary findings: How did it happen? Sequence of events. Be specific. If attachments are needed write comments on an 8 1/2 sheet of paper and attach to worksheet.

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**Outcome severity:**    *Nonexistent* ☐    *inconsequential* ☐    *consequential* ☐    *death* ☐    *not applicable* ☐    *unknown* ☐

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### 4. Response: a) corrective action, b) Plan of Action, c) other

Completed by (print name) \_\_\_\_\_

Completed by (signature) \_\_\_\_\_ Date completed \_\_\_\_\_

Reviewed by Supervisor (print name) \_\_\_\_\_

Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

**FRESNO COUNTY MENTAL HEALTH COMPLIANCE PROGRAM**  
*CONTRACTOR CODE OF CONDUCT AND ETHICS*

Fresno County is firmly committed to full compliance with all applicable laws, regulations, rules and guidelines that apply to the provision and payment of mental health services. Mental health contractors and the manner in which they conduct themselves are a vital part of this commitment.

Fresno County has established this Contractor Code of Conduct and Ethics with which contractor and its employees and subcontractors shall comply. Contractor shall require its employees and subcontractors to attend a compliance training that will be provided by Fresno County. After completion of this training, each contractor, contractor's employee and subcontractor must sign the Contractor Acknowledgment and Agreement form and return this form to the Compliance officer or designee.

**Contractor and its employees and subcontractor shall:**

1. Comply with all applicable laws, regulations, rules or guidelines when providing and billing for mental health services.
2. Conduct themselves honestly, fairly, courteously and with a high degree of integrity in their professional dealing related to their contract with the County and avoid any conduct that could reasonably be expected to reflect adversely upon the integrity of the County.
3. Treat County employees, consumers, and other mental health contractors fairly and with respect.
4. NOT engage in any activity in violation of the County's Compliance Program, nor engage in any other conduct which violates any applicable law, regulation, rule or guideline
5. Take precautions to ensure that claims are prepared and submitted accurately, timely and are consistent with all applicable laws, regulations, rules or guidelines.
6. Ensure that no false, fraudulent, inaccurate or fictitious claims for payment or reimbursement of any kind are submitted.
7. Bill only for eligible services actually rendered and fully documented. Use billing codes that accurately describe the services provided.

8. Act promptly to investigate and correct problems if errors in claims or billing are discovered.
9. Promptly report to the Compliance Officer any suspected violation(s) of this Code of Conduct and Ethics by County employees or other mental health contractors, or report any activity that they believe may violate the standards of the Compliance Program, or any other applicable law, regulation, rule or guideline. Fresno County prohibits retaliation against any person making a report. Any person engaging in any form of retaliation will be subject to disciplinary or other appropriate action by the County. Contractor may report anonymously.
10. Consult with the Compliance Officer if you have any questions or are uncertain of any Compliance Program standard or any other applicable law, regulation, rule or guideline.
11. Immediately notify the Compliance Officer if they become or may become an Ineligible person and therefore excluded from participation in the Federal Health Care Programs.

## **Fresno County Mental Health Compliance Program**

### **Contractor Acknowledgment and Agreement**

I hereby acknowledge that I have received, read and understand the Contractor Code of Conduct and Ethics. I hereby acknowledge that I have received training and information on the Fresno County Mental Health Compliance Program and understand the contents thereof. I further agree to abide by the Contractor Code of Conduct and Ethics, and all Compliance Program requirements as they apply to my responsibilities as a mental health contractor for Fresno County.

I understand and accept my responsibilities under this Agreement. I further understand that any violation of the Contractor Code of Conduct and Ethics or the Compliance Program is a violation of County policy and may also be a violation of applicable laws, regulations, rules or guidelines. I further understand that violation of the Contractor Code of Conduct and Ethics or the Compliance Program may result in termination of my agreement with Fresno County. I further understand that Fresno County will report me to the appropriate Federal or State agency.

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#### **For Individual Providers**

Name (print): \_\_\_\_\_

**Discipline:** ☐ Psychiatrist ☐ Psychologist ☐ LCSW ☐ LMFT

**Signature :** \_\_\_\_\_ **Date :** \_\_\_\_/\_\_\_\_/\_\_\_\_

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#### **For Group or Organizational Providers**

Group/Org. Name (print): \_\_\_\_\_

Employee Name (print): \_\_\_\_\_

**Discipline:** ☐ Psychiatrist ☐ Psychologist ☐ LCSW ☐ LMFT

☐ Other: \_\_\_\_\_

Job Title (if different from Discipline): \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

## **STATE MENTAL HEALTH REQUIREMENTS**

### **1. CONTROL REQUIREMENTS**

The COUNTY and its subcontractors shall provide services in accordance with all applicable Federal and State statutes and regulations.

### **2. PROFESSIONAL LICENSURE**

All (professional level) persons employed by the COUNTY Mental Health Program (directly or through contract) providing Short-Doyle/Medi-Cal services have met applicable professional licensure requirements pursuant to Business and Professions and Welfare and Institutions Codes.

### **3. CONFIDENTIALITY**

CONTRACTOR shall conform to and COUNTY shall monitor compliance with all State of California and Federal statutes and regulations regarding confidentiality, including but not limited to confidentiality of information requirements at 42, Code of Federal Regulations sections 2.1 *et seq*; California Welfare and Institutions Code, sections 14100.2, 11977, 11812, 5328; Division 10.5 and 10.6 of the California Health and Safety Code; Title 22, California Code of Regulations, section 51009; and Division 1, Part 2.6, Chapters 1-7 of the California Civil Code.

### **4. NON-DISCRIMINATION**

#### **A. Eligibility for Services**

CONTRACTOR shall prepare and make available to COUNTY and to the public all eligibility requirements to participate in the program plan set forth in the Agreement. No person shall, because of ethnic group identification, age, gender, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed, political belief or sexual preference be excluded from participation, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal or State of California assistance.

#### **B. Employment Opportunity**

CONTRACTOR shall comply with COUNTY policy, and the Equal Employment Opportunity Commission guidelines, which forbids discrimination against any person on the grounds of race, color, national origin, sex, religion, age, disability status, or sexual preference in employment practices. Such practices include retirement, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer,

rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

C. Suspension of Compensation

If an allegation of discrimination occurs, COUNTY may withhold all further funds, until CONTRACTOR can show clear and convincing evidence to the satisfaction of COUNTY that funds provided under this Agreement were not used in connection with the alleged discrimination.

D. Nepotism

Except by consent of COUNTY's Department of Behavioral Health Director, or designee, no person shall be employed by CONTRACTOR who is related by blood or marriage to, or who is a member of the Board of Directors or an officer of CONTRACTOR.

5. **PATIENTS' RIGHTS**

CONTRACTOR shall comply with applicable laws and regulations, including but not limited to, laws, regulations, and State policies relating to patients' rights

## SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"*

The definition above will be utilized for purposes of completing this disclosure form.

### INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**CERTIFICATION**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it, its owners, officers, corporate managers and partners:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

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

(c) (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature:

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name & Title)

Date:

\_\_\_\_\_

\_\_\_\_\_  
(Name of Agency or  
Company)