

AGREEMENT FOR SERVICES #366-173-M-E2010
AMENDMENT II

This Amendment II to that Agreement for Services #366-173-M-E2010, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and Willow Glen Care Center; (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, CONTRACTOR has been engaged by COUNTY to provide residential treatment services for mentally disordered adults for the Health Services Department, Mental Health Division in accordance with Agreement for Services #366-173-M-E2010, dated May 25, 2010, and Amendment I, dated April 6, 2011, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto have mutually agreed to amend *Article III – Compensation for Services*; and

WHEREAS, the parties hereto have mutually agreed to amend and replace *Exhibit C* of said Agreement; and

NOW THEREFORE, the parties do hereby agree that Agreement for Services #366-173-M-E2010 shall be amended a second time as follows:

1) Article III, Compensation for Services, shall be amended in its entirety to read as follows:

ARTICLE III

Section 3.01 **Compensation for Services:** Contractor shall submit monthly invoices no later than thirty (30) days following the end of a "service month" except in those instances where Contractor obtains written approval from County Health Services Department (HSD) Director or Director's designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a "service month" shall be defined as a calendar month during which Contractor provides services in accordance with ARTICLE I, "Scope of Services."

Section 3.02 For services provided herein, County agrees to pay Contractor monthly in arrears and within forty-five (45) days following the County's receipt and approval of itemized invoice(s) identifying services rendered. Payment shall be made for actual services rendered and shall not be made for service units the client did not attend or receive. Each invoice shall

describe: a) units of service by individual client served, and b) dates of service detail for each client, and c) program number of individual client.

Section 3.03 For the purposes of this Agreement, the billing rate shall be based on the total number of clients in the facility, as follows:

01 – 45 clients	\$128 per day
46 – 74 clients	\$108 per day
75 – 100 clients	\$88 per day

Section 3.04 Effective July 1, 2011, the rates shall be as follows:

01 – 45 clients	\$131 per day
46 – 74 clients	\$111 per day
75 – 100 clients	\$91 per day

Section 3.05 For clients who receive Supplemental Security Income (SSI) benefits or have sufficient alternative income, client/client's payee is required to pay an additional \$32 per day to Contractor as their residential share of cost.

Section 3.06 For clients who do not receive SSI benefits and do not have other income, County will pay an additional \$32 per day until such time as the client begins to receive SSI benefits or income from an alternative source. At that time, the responsibility for this additional payment will return to the client/client's payee. Should retroactive SSI benefits or other income be received on behalf of client for any period during which County paid this residential share of cost, County will be reimbursed for such payments, to the extent funds are available.

Section 3.07 "Bed holds" shall be subject to execution of a "Bed Hold Authorization" form, attached as Exhibit B, and shall be paid at the daily rates identified above. In addition to the above rates, an ancillary daily fee for extremely difficult behaviors of \$100 per day shall apply when one-to-one client supervision is necessary to ensure the safety of the client and staff. This fee is subject to pre-approval by the County, and shall be separately identified on invoice(s).

Section 3.08 The fee for an annual evaluation and conservatorship letter shall be \$200. Any additional evaluations required by a physician or psychologist shall be provided at no additional charge.

Section 3.09 Total amount of this Agreement shall not exceed \$275,000.

2) Exhibit C – "HIPAA Business Associate Agreement" shall be replaced in its entirety by Exhibit C (Amended) "HIPAA Business Associate Agreement" attached hereto and incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereto have executed this second Amendment to that Agreement for Services #366-173-M-E2010 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Raymond J. Nutting
Chair, Board of Supervisors
"COUNTY"

Attest: Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

Deputy

Dated: _____

-- CONTRACTOR --

WILLOW GLEN CARE CENTER,
A CALIFORNIA CORPORATION

By: 

Dated: 5-18-11

Thomas Ortner
Executive Director
"Contractor"

Exhibit C (Amended) HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

RECITALS

WHEREAS, COUNTY and CONTRACTOR (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to COUNTY, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the COUNTY and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

WHEREAS, COUNTY is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

WHEREAS, BA, when a recipient of PHI from COUNTY, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

WHEREAS, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

WHEREAS, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

WHEREAS, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI

- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the COUNTY, Privacy Rule, Security Rule, or the HITECH Act.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
 - (3) disclose PHI as necessary for BA's operations only if:
 - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
 - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
 - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
 - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing COUNTY with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by COUNTY.
 - (5) not disclose PHI disclosed to BA by COUNTY not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by COUNTY.
 - (6) de-identify any and all PHI of COUNTY received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from COUNTY, or from another business associate of COUNTY, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by COUNTY to BA, BA agrees to:
 - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
 - B. Report to COUNTY within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
 - C. Report to COUNTY in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the COUNTY, BA may be required to reimburse the COUNTY for notifications required under 45 CFR 164.404 and CFR 164.406.
 - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the COUNTY and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by COUNTY to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
 - A. Provide access, at the request of COUNTY, within five (5) days, to PHI in a Designated Record Set, to the COUNTY, or to an Individual as directed by the COUNTY. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable COUNTY to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
 - B. Within ten (10) days of receipt of a request from COUNTY, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule

in the event that the PHI in BA's possession constitutes a Designated Record Set.

- C. To assist the COUNTY in meeting its disclosure accounting under HIPAA:
 - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
 - (2) Within in 30 days of notice by the COUNTY, BA agrees to provide to COUNTY information collected in accordance with this section to permit the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.

- D. Make available to the COUNTY, or to the Secretary of Health and Human Services (the "Secretary"), BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide COUNTY a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of COUNTY.

- A. COUNTY agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by COUNTY that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

- B. COUNTY agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

- C. COUNTY agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

- D. COUNTY shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COUNTY, except as may be expressly permitted by the Privacy Rule.
 - E. COUNTY will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.
6. Term and Termination.
- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the COUNTY to BA, or created or received by BA on behalf of the COUNTY, is destroyed or returned to the COUNTY, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
 - B. Termination for Cause. Upon the COUNTY's knowledge of a material breach by the BA, the COUNTY shall either:
 - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the COUNTY.
 - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the COUNTY shall report the violation to the Secretary.
 - C. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of COUNTY, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
 - (2) In the event that the COUNTY determines that returning or destroying the PHI is infeasible, BA shall provide to the COUNTY notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If COUNTY elects destruction of the PHI, BA shall certify in writing to COUNTY that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "COUNTY") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the COUNTY in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of COUNTY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of COUNTY as set forth herein. BA's obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the COUNTY herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the COUNTY to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.