

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

**Meeting of
September 26, 2006**

AGENDA TITLE: Agreement #034-S0611, with Yolo County

DEPARTMENT: Mental Health

DEPT SIGNOFF:

CAO USE ONLY:

9/18

CONTACT: Barry Wasserman, LCSW

DATE: 9/1/2006

PHONE: 621-6220

Barry Wasserman

C. Laura Schwartz

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

The Mental Health Department requests the Board approve and authorize the Chairman to sign Agreement #034-S0611 with Yolo County. Yolo County utilizes El Dorado County's Psychiatric Health Facility on a fee-for-service basis. The term of this Agreement is from the date of execution to June 30, 2008.

CAO RECOMMENDATIONS: *Recommend approval. Laura J. Friel 9/18/06*

Financial impact? ☒ Yes ☐ No

Funding Source: ☐ Gen Fund ☒ Other

BUDGET SUMMARY:

Other: Yolo County

Total Est. Cost \$48,000.00

CAO Office Use Only:

Funding

4/5's Vote Required ☐ Yes ☒ No

Budgeted \$48,000.00

Change in Policy ☐ Yes ☒ No

New Funding

New Personnel ☐ Yes ☒ No

Savings*

CONCURRENCES:

Other

Risk Management ☒

Total Funding \$48,000.00

County Counsel ☐

Change in Net County Cost \$0.00

Other ☐

***Explain** \$24,000 is included in the FY 06-07 budget and \$24,000 will be requested in the FY 07-08 budget

BOARD ACTIONS:

Vote: Unanimous _____ Or

Ayes:

Noes:

Abstentions:

Absent:

Rev. 5/04 ISKW001 Agenda

**I hereby certify that this is a true and correct copy of
an action taken and entered into the minutes of the
Board of Supervisors**

Date: _____

Attest: Cindy Keck, Board of Supervisors Clerk

By: _____

**EL DORADO COUNTY
DEPARTMENT OF MENTAL HEALTH
ADMINISTRATIVE OFFICE**



Barry Wasserman, LCSW, Interim Director
344 Placerville Drive, Suite 20
Placerville, CA 95667
Phone: (530) 621-6200
Fax: (530) 622-3278

September 12, 2006

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Subject: Agreement #034-S0611 with Yolo County

RECOMMENDATIONS: The Mental Health Department is recommending the Board approve and authorize the Chairman to sign Agreement #034-S0611 with Yolo County. This Agreement will be effective on the date of execution and will expire on June 30, 2008.

REASONS FOR RECOMMENDATIONS: Like many other Northern California counties, Yolo County utilizes El Dorado County's Psychiatric Health Facility on a fee-for-service basis. The payment received for the services provided cover 100% of El Dorado County's costs.

County Counsel and Risk Management have approved this Agreement and a copy is on file in the Board Clerk's Office. County Counsel raised the issue of whether federal grant funds were a part of this contract, and if so, would federal Equal Employment Opportunity language need to be included. Yolo County has assured Mental Health that federal grant funds will not be used to pay for these services.

Please note that Yolo County has requested that we have our Board approve this Agreement prior to their Board's approval.

The County officer or employee with responsibility for administering this Agreement is Thomas Michaelson, Department Analyst, Department of Mental Health.

FISCAL IMPACT: The total amount of this two-year revenue generating agreement is \$48,000. Half of this amount has been budgeted in FY 06-07 and the other half will be budgeted in FY 07-08.

ACTION TO BE TAKEN FOLLOWING APPROVAL: The Board Clerk's Office will forward the executed agreement to Procurement. Procurement will forward the original copies of the agreement to Yolo County for their Board's approval.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Barry Wasserman", is written over a horizontal line.

Barry Wasserman, LCSW
Interim Director

CONTRACT ROUTING SHEET

Date Prepared: 5/10/05

Need Date:

HAWK-RECEIVED
RECEIVED

MAY 10 2005

PROCESSING DEPARTMENT:

Department: CAO/Proc. & Contracts
 Dept. Contact: Pam Carlone
 Phone #: 5933
 Department
 Head Signature: *Pam Carlone*

CONTRACTOR:

Name: Yolo County El Dorado County Counsel
 Address: 14 N. Cottonwood Street
 Woodland, CA
 Phone: 530-666-8516

CONTRACTING DEPARTMENT:

Mental Health

Service Requested: Mental Health to provide psychiatric services

Contract Term: 2 Years

Contract Value

Revenue Agrmt.

Compliance with Human Resources requirements? Yes:

No:

Compliance verified by:

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: ☒ Disapproved: ☐ Date: 5/13/05 By: *Just Beck*
 Approved: ☒ Disapproved: ☐ Date: 8/24/06 By: *Edmund*

ASSIGNMENT

DATE: 5-11-05
 ATTORNEY: PEB
 DEPT. INDEX NO. 006100
 BY: *EB*

*Dept to review if any fed grant funds involved
 such that EEO, etc, must be part of contract
 * Contract amended to include two provision requested by
 Yolo Int.*

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: ☒ Disapproved: ☐ Date: 5-13-05 By: *Shirley J. Dr*
 Approved: ☐ Disapproved: ☒ Date: 5-13-05 By: *Shirley J. Dr*

MAY 13 2005

*Smoking revised in language to purchasing for contract
 revision 5/13/05 revised PC*

MAY 13 2005

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments:

Approved: ☐ Disapproved: ☐ Date: ☐ By: ☐
 Approved: ☐ Disapproved: ☐ Date: ☐ By: ☐

ORIGINAL

AGREEMENT #034-S0611

THIS AGREEMENT, made and entered into between Yolo County, Department of Mental Health, hereinafter called "COUNTY" and El Dorado County, Department of Mental Health, which operates a Psychiatric Health Facility hereinafter called "CONTRACTOR."

WITNESSETH

WHEREAS, in accordance with the current Mental Health legislation, COUNTY has been charged with the responsibility of providing mental health services for mentally disordered persons, and;

WHEREAS, CONTRACTOR has the facilities and the ability to be certified and staffed to provide psychiatric inpatient hospital care and maintenance for mentally disordered persons, and;

WHEREAS, County has entered into agreements with the State of California Department of Mental Health to provide mental health services to County residents, copies of which have previously been provided to CONTRACTOR (State Agreement Performance No. 04-74263-000 and Managed No. 05-75120-000, County Agreements Nos. 05-26 and 05-79, hereinafter referred to as the "State contracts"). The State contracts require that all County subcontractors (including but not limited to CONTRACTOR) comply with all terms and conditions of the State contracts. CONTRACTOR shall comply with all applicable provisions of the State contracts, and those provisions are incorporated herein as if fully set forth in this place.

NOW, THEREFORE, it is hereby mutually agreed by and between the parties hereto as follows:

1. Description of Services: CONTRACTOR shall provide psychiatric inpatient services to residents of COUNTY over the age of eighteen (18) who are eligible for Mental Health Services under the California Community Mental Health Services Law, in adherence with Title XIX of the SS Act, 42 USC in conformance with all applicable federal and state statutes. Services will be provided, with prior authorization by COUNTY, to eligible persons who may be either on voluntary or involuntary status. The length of stay of each mentally disordered person shall be determined by the CONTRACTOR's professional staff. CONTRACTOR may, but is not required to, provide necessary emergency and non-elective ancillary medical services as part of the inpatient treatment services.

All persons referred for admission to CONTRACTOR's facility will be medically cleared for admission to a non-medical facility prior to admission to CONTRACTOR's facility. This medical clearance will be provided directly or indirectly and payment arranged or provided by COUNTY. Criteria and requirements for medical clearance will be determined by CONTRACTOR. All transportation costs to and from CONTRACTOR's facility for medical care and clearance are the responsibility of COUNTY.

CONTRACTOR shall not be required to accept referrals for treatment of individuals housed in jail or other penal institutions.

If services required by COUNTY patients exceed CONTRACTOR's capabilities, CONTRACTOR may utilize other facilities as mutually agreed upon by the Director of Mental Health of COUNTY and CONTRACTOR. It is recognized that to make efficient use of any inpatient facility, the provision of aftercare services is of extreme importance. To this end, it is the responsibility of COUNTY to maintain adequate aftercare services, such that efficient referral to these services may be made part of discharge planning of patients, including transportation, if necessary.

COUNTY will be responsible for aftercare and placement of all patients (LPS and non-LPS) (Lanterman-Petris-Short Act) covered by this Agreement upon their discharge from CONTRACTOR's facility or any subsequent placement facility.

COUNTY staff will work with CONTRACTOR's staff prior to a client's discharge to effect an appropriate placement of clients discharged from the CONTRACTOR's facility. It is understood and agreed that only mentally disordered persons are to be admitted pursuant to this Agreement and that inebriates and persons not mentally disordered, in the opinion of CONTRACTOR, are specifically excluded herefrom.

2. Directions and Supervision: Such services shall be provided by CONTRACTOR for COUNTY patients under the general supervision of the COUNTY Mental Health Department Director or his/her designee.

3. Patient Eligibility: Services under this Agreement shall be rendered without regard to race, color, sex, religion, national origin, ancestry, handicap, physical or mental status as specified in applicable federal and state laws. The specific admission procedures shall be mutually agreed upon by the respective Directors of Mental Health. It is the responsibility of CONTRACTOR to assure that the inpatient psychiatric services rendered to patients admitted to the CONTRACTOR's facility are consistent with state and federal laws. Documentation of services provided by CONTRACTOR for each patient of COUNTY shall be available for review by COUNTY upon request. Residency in COUNTY will be basic requirement for eligibility for these services. Transients referred by COUNTY in an emergency or involuntary status may also be serviced through this Agreement.

4. Payments: In consideration for CONTRACTOR providing inpatient psychiatric services to COUNTY patients pursuant to this Agreement, COUNTY shall pay CONTRACTOR at the rate of \$560.00 per patient/per day or portion of day, including the day of admission and excluding the day of discharge, all inclusive of: medications, psychiatrist's time, laboratory work and court costs. CONTRACTOR will bill the patient's insurance when applicable and apply such insurance payments to COUNTY cost. For patients who are COUNTY Medi-Cal beneficiaries, the COUNTY will be charged the SCHEDULE OF MAXIMUM ALLOWANCES (SMA) rate less a credit for payment due from Medi-Cal FFP.

In addition, COUNTY shall reimburse CONTRACTOR for transportation costs incurred by CONTRACTOR in implementing a discharge plan authorized by COUNTY. In consideration for CONTRACTOR's providing transportation for COUNTY patients, COUNTY shall pay CONTRACTOR \$14.00 per hour/per driver and \$0.445 per mile up to a maximum of \$750.00 during the term of the Agreement.

If it is determined, either before or after admission to CONTRACTOR's facility, that the patient has Medi-Cal eligibility in another County, it is the responsibility of the COUNTY to notify the County of financial responsibility that one of their Medi-Cal beneficiaries has been admitted to the CONTRACTOR's facility. It is also the responsibility of the COUNTY to provide documentation of this Agreement to the CONTRACTOR, who will then bill the County of responsibility, or other insurance when applicable, for reimbursement.

Regardless of a patient's County Medi-Cal eligibility or other insurance, the COUNTY is responsible for payment in full for CONTRACTOR's services.

The CONTRACTOR will not bill a patient directly for any services, such as unmet share of cost, deductibles, etc.

There is no administrative day rate. Payment is due from COUNTY for each day of inpatient psychiatric service, excluding day of discharge.

COUNTY understands and accepts that patients are encouraged and permitted to sign in as a voluntary commitment when possible pursuant to W&I 5250(c).

1. Cost Limitations and Term: The term of this Agreement shall commence when fully executed by both parties and shall expire June 30, 2008. The maximum amount payable under this Agreement is \$48,000.00 for the two (2) year period.

2. Admissions Procedure: CONTRACTOR agrees that only those patients which COUNTY specifically refers to CONTRACTOR for said program shall receive services. COUNTY's request for admission constitutes authorization.

3. Coordination of Care: COUNTY and CONTRACTOR agree that both of their clinical staff's will fully communicate and cooperate in the development of treatment, planning, determination of length of stay, and readiness for discharge, and in the process of planned transition back into the community and to this end may freely exchange patient information as a unitary treatment program. COUNTY agrees to facilitate timely placement for patients ready for discharge.

Applicable Records: CONTRACTOR shall maintain for four (4) years or until certification review findings are resolved, whichever is later, adequate records on each COUNTY patient served, including intake information and a record of services provided by CONTRACTOR staff in sufficient detail to make possible an evaluation of services, and shall contain all the data necessary for reporting to the State Department of Mental Health, including records of interviews and progress notes. CONTRACTOR shall maintain complete financial records. Any apportionment of costs shall be made in accordance with generally accepted

accounting principles and shall evidence proper audit trails reflecting the true cost of services rendered. Statistical data shall be kept and reports made as required by the COUNTY Mental Health Department and the State Department of Mental Health in a form specified by either. All records shall be available for inspection by the Auditors of COUNTY or the State Department of Mental Health at reasonable times during normal business hours. CONTRACTOR agrees to extend to the COUNTY Mental Health Department Director or his/her designee the right to review and investigate all records, program, or written procedures relating to COUNTY patients at any reasonable time; CONTRACTOR agrees to provide the COUNTY Mental Health Department data in a timely fashion as directed and as specified by COUNTY Mental Health Department.

9. Agreement Approval: This Agreement shall be null and void in its entirety if disapproved by the State Department of Mental Health or the Local Health Authorities.

10. Status of Contractor: The parties hereto agree that CONTRACTOR, its agents and employees, including its professional and non-professional staff, in the performance of the Agreement shall act in an independent capacity and not as officer of employees or agents of COUNTY. The CONTRACTOR shall furnish all personnel, supplies, equipment, furniture, insurance, utilities, telephone, and quarters necessary for the performance of the Mental Health services to be provided by CONTRACTOR pursuant to the Agreement.

11. Indemnity: COUNTY shall be responsible for damages caused by the acts or omissions of its officers, employees and agents occurring in the performance of this Agreement. CONTRACTOR shall be responsible for damages caused by the acts or omissions of its officers, employees and agents occurring in the performance of this Agreement. It is the intention of CONTRACTOR and COUNTY that the provisions of this paragraph be interpreted to impose on each party, responsibility for the acts of their respective offices, employees and agents. It is also the intention of CONTRACTOR and COUNTY that, where comparative negligence is determined to have been contributory, principles of comparative negligence will be followed and each party will bear the proportionate cost of any damages attributable to the negligence within thirty (30) days of receipt of any claim or lawsuit arising from this Agreement.

12. Insurance: CONTRACTOR is covered for its general liability, automobile liability, property, and workers' compensation liability through a self-insurance program, in conjunction with excess coverage through the California State Association of Counties – Excess Insurance Authority. A certificate of coverage will be furnished to COUNTY upon request.

13. Certificate of Nondiscrimination: CONTRACTOR certifies that they do not employ discriminatory practices in employment of personnel, assignment of accommodations, or in any other respect on the basis of race, color, sex, religion, national origin, ancestry, handicap, physical or mental status.

14. Assignment: This Agreement shall not be assigned by CONTRACTOR, either in whole or in part, without prior written consent of COUNTY. This Agreement and the terms and conditions hereof shall insure and be binding upon the successors and assigns of the parties hereto.

15. Fiscal Considerations: The parties to this Agreement recognize and acknowledge that both CONTRACTOR and COUNTY are political subdivisions of the State of California. As such, both are subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of COUNTY'S and CONTRACTOR'S businesses, they will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, either party shall give notice of cancellation of the Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement.

Upon the effective date of such notice, this Agreement shall be automatically terminated and COUNTY and CONTRACTOR released from any further liability hereunder. In addition to the above, should the respective Boards of Supervisors, during the course of a given year, for financial reasons reduce or order a reduction in the budget for either COUNTY'S or CONTRACTOR'S departments for which services were contracted to be performed, pursuant to this paragraph, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

16. Default, Termination, and Cancellation:

A. Default:

Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of the Agreement unless the party giving notice so elects in subsequent written notice after the time to cure has expired.

B. Ceasing Performance:

COUNTY or CONTRACTOR may terminate this Agreement in the event either becomes unable to substantially perform any term or condition of this Agreement.

C. Termination or Cancellation without Cause:

COUNTY or CONTRACTOR may terminate this Agreement in whole or in part seven(7) calendar days upon written notice by either for any reason. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, COUNTY reserves the right to take over and complete the work by contract or by any other means.

17. Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered. Notices to CONTRACTOR shall be addressed as follows:

MR. TOM MICHAELSON, DEPARTMENT ANALYST
EL DORADO COUNTY DEPARTMENT OF MENTAL HEALTH
344 PLACERVILLE DRIVE, SUITE 20
PLACERVILLE, CA 95667

or to such other location as the CONTRACTOR directs.

Notices to COUNTY shall be addressed as follows:

YOLO COUNTY
14 N COTTONWOOD STREET
WOODLAND, CA 95695
ATTN: TOM PINIZZOTTO

or to such other location as the COUNTY directs.

18. Rules and Laws: CONTRACTOR and COUNTY agree that both are bound in the accomplishment of this Agreement by provisions of the Bronzan Bill, Title 9 of the California Administrative Code, regulations of the State Department of Mental Health, as amended, Local Mental Health Authority and other applicable laws, regulations and policies governing the provisions of public Mental Health services, CONTRACTOR and COUNTY agree to maintain the confidentiality of patient information and records as provided by applicable law; notwithstanding, professional records and COUNTY patient information shall be interchangeable between CONTRACTOR and COUNTY to establish and support a high level of clinical services and continuity of care and aftercare services.

The employee designated to administer this agreement for the El Dorado County Mental Health Department is Tom Michaelson, Department Analyst.

19. Confidentiality: The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any client. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all requests for disclosure of such information not emanating from the client. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such information to anyone other than the COUNTY, except when subpoenaed by a court. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finder or voice print or a photograph.

20. HIPAA Compliance: CONTRACTOR shall comply with, and shall ensure that its officers, agents, employees, participants and volunteers comply with, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, and the privacy and security requirements of Exhibit "A", attached hereto and made by referenced a part hereof.

Without limiting the rights and remedies of COUNTY elsewhere as set forth in this Agreement, COUNTY may terminate this Agreement without penalty or recourse if determined that CONTRACTOR violated a material term of the provisions of this section. CONTRACTOR ensures that any subcontractors' agents receiving health information related to this Agreement agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

YOLO COUNTY:

Dated: _____

Dated: _____

**Tom Pinizzotto, Director
Mental Health Department**

**Chairman
Board of Supervisors**

APPROVED AS TO FORM:

COUNTY COUNSEL

EL DORADO COUNTY:

Dated: 8-31-06

Tom Michaelson

**Tom Michaelson, Contract Administrator
Mental Health Department**

Dated: 9/1/06

Barry Wasserman

**Barry Wasserman, Interim Director
Mental Health Department**

Dated: _____

Chairman, Board of Supervisors

**ATTEST:
Cindy Keck, Clerk of the Board of Supervisors**

By: _____
Deputy Clerk

Dated: _____

EXHIBIT "A"

HIPAA Business Associate Agreement

This HIPAA 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 entered into the Underlying Agreement pursuant to which Contractor 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 made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 - 164 (the "Privacy and Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and

WHEREAS, Contractor, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; 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); and

WHEREAS, the parties agree that any disclosure or use of PHI or EPHI be in compliance with the Privacy and Security Rule or other applicable law;

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 Contractor of County Disclosed PHI**
 - A. **Contractor shall be permitted to use PHI disclosed to it by the County**
 - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County
 - (2) as necessary to perform any and all of its obligations under the Underlying Agreement.
 - 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, Contractor 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 Contractor's proper management and administration or to fulfill any

legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:

- (a) The disclosure is Required by Law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
 - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
 - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) 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.
 - (4) not disclose PHI disclosed to Contractor 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.
 - (5) de-identify any and all PHI of County received by Contractor 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. Contractor 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 Contractor. In connection with its use of PHI disclosed by County to Contractor, Contractor agrees to:

- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
- B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
- C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Business Associate Agreement.
- D. Report to County any use or disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware.
- E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to **this Business Associate Agreement.**
- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.

- G. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the County and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
 - H. Contractor will report any security incident of which it becomes aware to the County. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or "pings".
 - I. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
 - J. May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).
4. PHI Access, Amendment and Disclosure Accounting. Contractor 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.
 - B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, 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.
 - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
 - D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
 - E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
 - F. Within sixty (60) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.

- G. Not make any disclosure of PHI that County would be prohibited from making.

5. **Obligations of County.**

- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will make its best efforts to promptly notify Contractor 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 Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it make it's best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI.
- D. County shall not request Contractor 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 Contractor 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 Contractor, or created or received by Contractor 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 Contractor, the County shall either:
 - (1) Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the Contractor 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 Contractor shall return or destroy all PHI received from the County, created or received by the Contractor on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Contractor.

Contractor shall retain no copies of the PHI.

- (2) In the event that the Contractor determines that returning or destroying the PHI is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such PHI.

7. **HIPAA Business Associate Indemnity**

Contractor 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 from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to 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 arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Business Associate Agreement. Contractor 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 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 in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their 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 Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor 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 Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

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 2782. Such

interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

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.

Dated: 9/1/06

Dated: _____

Signed: Barry Wasserman
Barry Wasserman, Director
Mental Health Department
El Dorado County

Signed: _____
Tom Pinizzotto, Director
Mental Health Department
Yolo County