

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
EVER WELL HEALTH SYTEMS, LLC**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Ever Well Health Systems, LLC, hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of residential home services for mentally ill clients.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services  
Exhibit B—Payments and Rates  
Attachment E—Fingerprinting Certification  
Attachment I—§ 504 Compliance

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed FIVE HUNDRED SEVENTY FIVE THOUSAND FOUR HUNDRED DOLLARS (\$575,400). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

**4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2017, through June 30, 2020.

**5. Termination**

This Agreement may be terminated by Contractor or by the Chief of the Health System or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

**6. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

**7. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

**8. Hold Harmless**

**a. General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**b. Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or

acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

#### **9. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

#### **10. Insurance**

##### **a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

##### **b. Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In

signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- |  |             |
|--|-------------|
| (a) Comprehensive General Liability...   | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance... | \$1,000,000 |
| (c) Professional Liability.....          | \$1,000,000 |

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial

assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **12. Non-Discrimination and Other Requirements**

### **a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

### **b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

### **c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

### **d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting: Violation of Non-discrimination Provisions**

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;

- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

**h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

**13. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

**14. Retention of Records; Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending



matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

#### **15. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

#### **16. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

#### **17. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: San Mateo County Health System  
Behavioral Health and Recovery Services  
Address: 2000 Alameda De Las Pulgas.  
San Mateo, CA 94403  
Telephone: 650-573-3615  
Facsimile: 650-522-9830

In the case of Contractor, to:

Name/Title: Ever Well Health Systems, LLC  
Att: Richard Groberg  
Address: 391 Front Street, Suite E  
Grover Beach, CA 93433  
Telephone: 888-356-1373

#### **18. Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

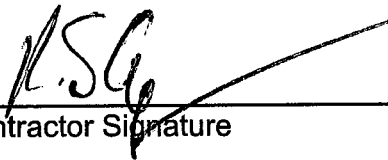
#### **19. Payment of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: EVER WELL HEALTH SYSTEMS, LLC

  
\_\_\_\_\_  
Contractor Signature

6/5/17  
\_\_\_\_\_  
Date

**EVER WELL HEALTH SYSTEMS, LLC**  
Contractor Name (please print)

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COUNTY OF SAN MATEO

By: \_\_\_\_\_

President, Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Clerk of Said Board

EVER WELL HEALTH SYSTEMS, LLC  
2017-2020

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

I. MENTAL HEALTH PROGRAM SERVICES

For the term of this Agreement as herein specified, Contractor shall provide to the Behavioral Health and Recovery Services Division (BHRS) bed space for San Mateo County residents who are seriously mentally ill and in need of mental health rehabilitation, treatment and long term care.

A. Contractor shall provide a broad range of services in a niche, structured environment focused on each resident's specific needs and interest. Services shall be designed to enhance basic living skills, improve social functioning, allow for training opportunities within the community, and for participation in out-of-home activities, in an effort to normalize each resident's lifestyle. Such services are intended to help each resident reach and maintain his/her highest level of functioning resulting in reintegration into the community. A schedule of these services shall be developed each month outlining daily routines and opportunities. In addition, Contractor shall develop an Individual Program Plan for each resident to target specific independent living skills and goals. The Individual Program Plan shall be focused on measurable goals and specific activities to be provided by Contractor to assist each resident in reaching the goals in the plan. Contractor shall:

1. Provide room and board
2. Provide or arrange transportation to day programs, community events, recreational activities, and medical appointments.
3. Provide organized, educational opportunities such as budgeting training, communication skills, nutrition/meal planning, and substance abuse awareness.
4. Ensure that each resident is given the opportunity to attend and participate in community activities including, but not limited to local worship services and activities, and community activities and events (i.e., ball games, dances, plays).

5. Encourage/facilitation of each resident in taking increasing responsibility for his/her own treatment by supporting self-established goals and the use of support and treatment systems.
6. Assist each resident with socialization and group activities to enhance problem-solving skills, self-disclosure, social and family relationship skills, and appropriate expression of feelings.
7. Establish peer and family support to promote proactive roles within the facility as well as with family.
8. Provide organized recreation events and community outings to help each resident with the development of leisure skills and improve social functioning.
9. Provide case management services to provide linkage to community resources, care coordination with primary medicine and mental health case managers, and monitoring of health conditions.
10. Assist each resident with his/her medication regiment and communication with the psychiatrist.
11. Assist each resident in the development of personal hygiene grooming, dressing, and household living skills.
12. Provide close supervision of, and intensive interactions with, each resident who requires management of difficult behaviors, consistent with the Individual Treatment Plan.
13. Provide 24 hour on-site coverage.
14. Contractor's employees shall participate in trainings as required for maintaining licensures as a board and care facility.
15. Maintain documentation on all County clients.
16. Levels of Treatment are to be arrived at mutually between the County and Contractor. Levels of treatment, or client profiles may be defined as follow:

- b. **LEVEL II:** Includes individuals with a major health condition who have been residing in the community, secure settings, or locked settings but are ready for a less restrictive environment, and would benefit from 6-8 month of Contractor integrated care model in order to progress to lower levels of care to restore health and function. Chronic disease is present and may or may not be controlled with medication or lifestyle support. A Restricted Health Condition Plan is required. Client discharge to licensed care or Intensive community supportive care management setting should be expected.
- c. **COMMUNITY LIVING:** Includes individuals with a major mental health condition that have been residing previously in structured, supported services settings and can demonstrate improved health and function. Chronic disease may also be present, but the condition(s) are well-controlled with medications and/or lifestyle supports and no Restricted Health Condition Plan is required. Discharge to independent living is the preferred condition for most Community living residents.

## B. ADMISSIONS

All admissions shall be subject to screening procedures and standards mutually agreeable to Contractor and Director of BHRS or designee.

The admission of all persons receiving services under this Agreement must receive the approval of the Director of BHRS or designee. A signed authorization form shall indicate such approval.

Additional screening and evaluation are performed by Contractor's staff prior to admission to these programs. Contractor must provide a Treatment Plan for all specialty outpatients' mental health services to all County clients. Contractor shall provide additional assistance and monitoring for clients with issues affecting the management of their severe symptomology and functional impairments. The program shall also monitor any on-going medical issues through collaboration with healthcare providers.

## C. REPORTING

1. The BHRS Division's Management Information System (MIS) unit will complete state-required Client Data System (CDS) reports. Contractor shall cooperate with County requests for information on patients placed under the terms of this agreement.
2. Contractor shall provide on request reasonable information on medications prescribed and administered to patients placed under this Agreement.
3. Contractor will provide to the Chief of the Health System or designee a photocopy of each unusual occurrence report filed with the State Department of Health Services, as defined in Section 72541 of Division 5, Title 22, California Code of Regulations.
4. County shall have reasonable access to all areas of the facility during business hours and to such data as will allow for the meaningful evaluation and monitoring of quality of care.
5. Contractor shall provide a quarterly report on restraint/seclusion use on patients placed under this Agreement.

## D. AUGMENTED SERVICES

Augmented services provides, such as extraordinary staffing requests, residents requiring special medical attention waivers or treatments, and other enhanced services may be negotiated on an individual basis.

## E. TRANSPORTATION SERVICES

Transportation charges are not for routine or local transportation. Transportation services are for transport of County clients to specialty medical care (i.e., dialysis), or court hearings only. Transportation services shall be preauthorized by the Director of Behavioral Health and Recovery Services, or designee.

## F. MEDICATION SUPPORT SERVICES

Daily dispensing of medications is a non-billable service included in the residential rate.

## G. BED HOLD

When a client's symptoms escalate to the point he/she cannot be managed at this level of care, and requires treatment in an acute psychiatric inpatient facility, the client shall be allowed a seven (7) day bed hold. The seven (7) day bed hold shall also be instituted should a client need a brief stay in an acute medical inpatient facility for physical health needs.

## II. ADMINISTRATIVE REQUIREMENTS

### A. Compliance with Health Information Privacy and Accountability Act (HIPAA), Confidentiality Laws, and PHI Security

Contractor must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information (PHI), including electronic PHI, that it creates, receives, maintains, uses or transmits, in compliance with 45 C.F.R and to prevent use or disclosure of PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards. Contractor is required to report any security incident or breach of confidential PHI to BHRS Quality Management within twenty – four (24) hours.

Contractor will develop and maintain written information Privacy and Security Program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.

Contractor agrees to comply with the provisions of 42 C.F.R. Part 2 as described below if records contain or contract possesses any PHI covered under 42 C.F.R Part 2:

1. Acknowledge that in receiving, storing, processing, or otherwise using any information from BHRS about the clients in the program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Behavioral Health and Recovery Services Patient Records, 42 C.F.R. Part 2;
2. Undertake to resist in judicial proceedings any effort to obtain access to information pertaining to clients otherwise than as expressly provided for in the federal confidentiality regulations, 42 C.F.R. Part 2; and



3. Agree to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected information.

Confidentiality Training:

Contractor is required to conduct, complete and maintain record of annual confidentiality training by all staff serving or accessing PHI of BHRS clients. Contractor may utilize the County of San Mateo BHRS Confidentiality trainings located at <http://smchealth.org/bhrs/providers/ontrain>

B. Medication Support Services

For Contractors that provide or store medications: Contractor will store and dispense medications in compliance with all pertinent state and federal standards. Policies and procedures must be in place for dispensing, administering and storing medications consistent with BHRS Policy 99-03, Medication Room Management and BHRS Policy 04-08 Medication Monitoring located at [www.smchealth.org/bhrs-documents](http://www.smchealth.org/bhrs-documents). In particular:

- a. Medications are logged in, verified, counted and added to inventory sheets.
- b. All medications obtained by prescription are labeled in compliance with federal and state laws. Prescription labels are altered only by persons legally authorized to do so.
- c. Medications intended for external use only are stored separately from medications intended for internal use; food and blood samples are stored in separate refrigerators.
- d. All medications are stored at proper temperatures: room temperature drugs at 59-86 degrees Fahrenheit and refrigerated drugs at 36-46 degrees Fahrenheit.
- e. Medications are stored in a locked area with access limited to those medical personnel authorized to prescribe, dispense or administer medication.
- f. Medications are disposed of after the expiration date and recorded.
- g. Injectable multi-dose vials are dated and initialed when opened.

- h. A medications log is maintained to ensure that expired, contaminated, deteriorated and abandoned medications are disposed in a manner consistent with state and federal laws.
- i. "Stock" medications that are not prescribed by the client's physician may not be used (for example, Tylenol).

C. Record Retention

Paragraph 14 of the Agreement notwithstanding, Contractor shall maintain medical records required by the California Code of Regulations. Notwithstanding the foregoing, Contractor shall maintain beneficiary medical and/or clinical records for a minimum of seven (7) years, except that the records of persons under age eighteen (18) at the time of treatment shall be maintained: a) until one (1) year beyond the person's eighteenth (18th) birthday or b) for a period of seven (7) years beyond the date of discharge, whichever is later. This rule does not supersede professional standards (Contractor is allowed to maintain records for a longer period of time if required by other regulations or licenses).

D. Administering Satisfaction Surveys

Contractor agrees to administer/utilize any and all survey instruments as directed by BHRS, including outcomes and satisfaction measurement instruments.

E. Cultural Competency

Implementations of these guidelines are based on the National Culturally and Linguistically Accessible Services (CLAS) Standards issued by the Department of Health and Human Services. For more information about these standards, please contact the Health Equity Initiatives Manager (HEIM) at 650-573-2714 or [jafrica@smcgov.org](mailto:jafrica@smcgov.org)

Out of county contractors must attest to compliance with all of the pertinent cultural competence requirements in their host County contract. Out of county contractors shall submit to HEIM ([jafrica@smcgov.org](mailto:jafrica@smcgov.org)) by March 31st, documentation of their compliance.

Technical Assistance -- Contractors who are not able to comply with the cultural competence requirements will be asked to meet with the Program Manager and HEIM ([jafrica@smcgov.org](mailto:jafrica@smcgov.org)) to plan for appropriate technical assistance.

F. Licensing Reports

Contractor shall submit a copy of any licensing report issued by a licensing agency to BHRS Deputy Director of Adult and Older Adult Services, or designee, within ten (10) business days of Contractor's receipt of any such licensing report.

G. Beneficiary/Patient's Rights

Contractor will comply with County policies and procedures relating to beneficiary/patient's rights and responsibilities as referenced in the agreement Section 10. Compliance with laws; payment of Permits/Licenses.

H. Compliance Plan and Code of Conduct

Contractor shall read and be knowledgeable of the compliance principles contained in the BHRS Compliance Plan and Code of Conduct. In addition, Contractor shall assure that Contractor's workforce is aware of compliance mandates, and are informed of the existence and how to use the Compliance Improvement Hotline Telephone Number (650) 573-2695.

I. Availability and Accessibility of Service

Contractor shall offer hours of operation that are no less than the hours of operation offered to commercial enrollees, if the Contractor also serves enrollees of a commercial plan, or that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered by the County or another Mental Health Plan, if the Contractor serves only Medi-Cal clients.

J. Critical Incident Reporting

Contractor is required to submit Critical Incident reports to BHRS Quality Management (via fax # 650-525-1762) when there are unusual events, accidents, errors, violence or significant injuries requiring medical treatment for clients, staff or members of the community. (Policy #93-11 and 45 C.F.R. § 164, subpart C, in compliance with 45 C.F.R. § 164.316.)

The incident reports are confidential however discussion may occur with the Contractor regarding future prevention efforts to reduce the likelihood of recurrence. Contractor is required to participate in all activities related to the resolution of critical incidents.

## K. Ineligible Employees

BHRS requires that contractors identify the eligibility status of employees, interns or volunteers prior to hiring and on an annual basis thereafter. Results of the eligibility screenings are to be maintained in the employee files. This process is meant to ensure that any person delivering services to clients of BHRS are not currently excluded, suspended, debarred or have been convicted of a criminal offense as described below. The Contractor must notify BHRS Quality Management (by completing the BHRS Critical Incident Reporting form, Policy #93-11) should a current employee, intern or volunteer be identified as ineligible. Contractors are required to screen for ineligible employees, interns and volunteers by using the following websites:

### 1. Office Of Inspector General

Contractor may not employ any persons deemed an Ineligible Person by the Office of the Inspector General in the provision of services for the County through this agreement. Any employee(s) of contractor determined to be an Ineligible Person will be removed from responsibility for, or involvement with County clients or operations. An "Ineligible Person" is an individual who (1) is currently excluded, suspended, debarred or otherwise ineligible to participate in Federal health care programs, or (2) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment or ineligibility. Ineligibility may be verified by checking: [www.Exclusions.OIG.HHS.Gov](http://www.Exclusions.OIG.HHS.Gov)

### 2. California Department of Healthcare Services (DHCS)

Contractors providing state funded health services may not employ any persons deemed an Ineligible Person by the California Department of Health Care Services (DHCS) in the provision of services for the County through this agreement. Any employee(s) of contractor determined to be an Ineligible Person will be removed from responsibility for, or involvement with County clients or operations. An "Ineligible Person" is an individual who has been (1) convicted of a crime involving fraud or abuse of the Medi-Cal program, or (2) suspended from the federal Medicare program for any reason. Ineligibility may be verified by checking: <http://files.medi-cal.ca.gov>, once there, type "medi-cal suspended and ineligible provider list in the search box.

L. Advances Directives

Contractor will comply with County policies and procedures relating to advance directives.

M. Surety Bond

Contractor shall retain and show proof of a bond issued by a surety company in accordance with Community Care Licensing's regulations for a licensee who may be entrusted with care and/or control of client's cash resources.

N. Fingerprint Compliance

At County's sole discretion, Contractor certifies that its employees and/or its subcontractors, assignees, and volunteers who, during the course of performing services under this Agreement, have contact with children or any person under his or her care will be fingerprinted in order to determine whether they have a criminal history which would compromise the safety of children or individuals with whom Contractor's employees and/or its subcontractors, assignees, or volunteers have contact. If said employees and/or subcontractors, assignees, and volunteers have such a criminal history, they shall not have contact with children or others who receive services through this agreement. Fingerprint information received from the Department of Justice (DOJ) shall be retained or disposed of pursuant to DOJ directive. A certificate of fingerprinting certification is attached hereto and incorporated by reference herein as Attachment E.

O. Minimum Staffing Requirements

Contractor shall have on file job descriptions (including minimum qualifications for employment and duties performed) for all personnel whose salaries, wages, and benefits are reimbursable in whole or in part under this Agreement. Contractor agrees to submit any material changes in such duties or minimum qualifications to County prior to implementing such changes or employing persons who do not meet the minimum qualifications currently on file. Contractor service personnel shall be direct employees, contractors, volunteers, or training status persons.

III. GOALS AND OBJECTIVES

Goal 1: To minimize inappropriate or unnecessary state and psychiatric acute hospitalization to the extent clinically appropriate.

Objective 1: No more than ten percent (10%) of all admissions will be discharged to an acute psychiatric level of care.

Data will be provided by Contractor to County by-annually, June 1 and December 1.

Objective 2: At least sixty-six percent (66%) of clients will show a decrease in the percentage of hospital days compared to the year prior to their admission.

Data will be provided by Contractor to County by-annually, June 1 and December 1.

Goal 2: To modify clients' dysfunctional maladaptive behavioral patterns and develop daily living skills which will enable them to live in a less restrictive, more independent setting.

Objective 1: At least sixty percent (60%) of all discharged clients will be discharged to a less restrictive, more independent level of care, which shall include all community-based supported housing.

Data will be provided by Contractor to County by-annually, June 1 and December 1.

EXHIBIT B PAYMENTS AND RATES  
EVER WELL HEALTH SYSTEMS, LLC  
2017-2020

I. PAYMENTS

In full consideration of the services provided by Contractor pursuant to this Agreement, and subject to Paragraph 3 ("Payments") of this Agreement, County shall pay Contractor in the manner described below, except that any and all such payments shall be subject to the conditions contained in this Agreement.

A. Maximum Obligation

Notwithstanding the method of payment set forth herein, in no event shall County pay or be obligated to pay Contractor more than the sum of FIVE HUNDRED SEVENTY FIVE THOUSAND FOUR HUNDRED DOLLARS (\$575,400) for services provided under Exhibit A, of this Agreement for the term July 1, 2017 through June 30, 2020.

1. FY 2017-2018

County shall pay Contractor for up to a maximum of three (3) beds per month according to the following rates of payment, not to exceed ONE HUNDRED NINETY ONE THOUSAND SIX HUNDRED TWENTY FIVE DOLLARS (\$191,625):

- a. LEVEL I: County shall pay Contractor at the daily bed rate of ONE HUNDRED FIFTY DOLLARS (\$150), per client.
- b. LEVEL II: County shall pay Contractor at the daily bed rate of ONE HUNDRED SEVENTY FIVE DOLLARS (\$175), per client.
- c. COMMUNITY LIVING: County shall pay Contractor at the daily bed rate of SEVENTY FIVE DOLLARS (\$75), per client.

2. FY 2018-2019

County shall pay Contractor for up to a maximum of three (3) beds per month according to the following rates of payment, not to exceed ONE HUNDRED NINETY ONE THOUSAND SIX HUNDRED TWENTY FIVE DOLLARS (\$191,625):

- a. LEVEL I: County shall pay Contractor at the daily bed rate of ONE HUNDRED FIFTY DOLLARS (\$150), per client.
- b. LEVEL II: County shall pay Contractor at the daily bed rate of ONE HUNDRED SEVENTY FIVE DOLLARS (\$175), per client.
- c. COMMUNITY LIVING: County shall pay Contractor at the daily bed rate of SEVENTY FIVE DOLLARS (\$75), per client.

3. FY 2019-2020

County shall pay Contractor for up to a maximum of three (3) beds per month according to the following rates of payment, not to exceed ONE HUNDRED NINETY TWO THOUSAND ONE HUNDRED FIFTY DOLLARS (\$192,150):

- a. LEVEL I: County shall pay Contractor at the daily bed rate of ONE HUNDRED FIFTY DOLLARS (\$150), per client.
- b. LEVEL II: County shall pay Contractor at the daily bed rate of ONE HUNDRED SEVENTY FIVE DOLLARS (\$175), per client.
- c. COMMUNITY LIVING: County shall pay Contractor at the daily bed rate of SEVENTY FIVE DOLLARS (\$75), per client.

4. Payment by County to Contractor shall be monthly. Contractor shall bill BHRS on or before the tenth (10th) working day of each month. All claims shall clearly reflect patient names, number of patient days, and daily negotiated rate. Non-billable clients referenced in Paragraph A.2. of this Exhibit A must be included in the monthly claim with a daily rate of ZERO DOLLARS (\$0) and the source of reimbursement indicated. County reserves the right to change the claims instructions, and/or require the Contractor to modify their description of services as the County deems necessary.



C. Reporting

1. Payment by County to Contractor shall be monthly. Contractor shall bill County on or before the tenth (10<sup>th</sup>) working day of each month for the prior month. The invoice shall include a summary of services and changes for the month of service. All claims shall clearly reflect patient names, number of patient days, and daily negotiated rate. Non-billable clients referenced in this Exhibit B must be included in the monthly claim with a daily rate of ZERO DOLLARS (\$0) and the source of reimbursement indicated. In addition contractor shall provide back-up to the invoice. Such back-up shall be in the form of:
  - a. County provided service reporting form(s) ("Service Reporting Form(s)") completed by Contractor according to the instructions accompanying the Service Reporting Form(s), or
  - b. County approved form(s) which provide detailed description of services provided including but not limited to: client name, mental health ID#, service date, type of service provided (Ex: enhanced rate, one-to-one supervision, etc.), and duration of service (hour/minute format).
2. All residential care facilities including IMD's and MHRC's shall provide County a weekly census using a County-provide standardized form. This form shall be completed and sent via the County's secure email system to BHRS-MIS-Census@smcgov.org or faxed to (650) 573-2110 (Attention MIS/Billing) on each Monday following the end of the report week. If you opt to use secure email, MIS/Billing at (650) 573-2502 to initiate that use.

The weekly census will not replace but will be in addition to the monthly invoice that is required in paragraph C.1 above.
3. County reserves the right to change the Service Report Forms, instructions, and/or require the Contractor to modify their description of services as the County deems necessary.

- D. The Chief of the Health System or designee is authorized to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

E. Medi-Cal Amendment

Contractor and County agree to amend this Agreement to include new requirements for this contract term pertaining to reimbursement for services provided, clinical documentation requirements, the contractor's quality assurance processes and procedures, and procedures for the disallowance of services when payment has already been made to the Contractor. Those new provisions have not been finalized in time to be included in this original Agreement, and will be added through an Amendment to this Agreement during FY 2017-18. Changes made through the Amendment will be made in order to be in compliance with State and federal requirements for the provision of Medi-Cal funded services, and will include any additional related provisions as deemed necessary by the County.

F. Payment for temporary absences shall be made according to the following state policies as outlined in Department of Mental Health Letter 86 01:

1. Payment for temporary absence in the supplemental services program and for life support services in residential care facilities can be limited to seven (7) days per month. Such payment is allowable only under all of the following conditions:
  - a. the absence is consistent with the client's service and treatment plans;
  - b. the absence is necessary for the client's progress or maintenance at this level of care;
  - c. the absence is planned, or anticipated; and
  - d. the absences, as well as the purpose(s) of the absence, are documented.
2. Payment for temporary absence for purposes of acute hospital or acute non-hospital (psychiatric health facility) treatment, or for treatment in other facilities which meet Title 9 staffing standards (Section 663), except as provided in section C, paragraph 1(a) above, can be limited to ten (10) days per month. Payment is allowable if such treatment is necessary for the client to return to this level of care, i.e., in a residential care facility, and if the purpose(s) is documented.

- G. If County or Contractor finds that performance is inadequate, at the County's discretion, a meeting may be called to discuss the causes for the performance problem, and this Agreement may either be renegotiated, allowed to continue to end of term, or terminated pursuant to Paragraph 5 of this Agreement. Any unspent monies due to performance failure may reduce the following year's agreement, if any.
- H. In the event Contractor claims or receives payment from County for a service, reimbursement for which is later disallowed by County or the State of California or the United States Government, then Contractor shall promptly refund the disallowed amount to County upon request, or, at its option, County may offset the amount disallowed from any payment due or become due to Contractor under this Agreement or any other agreement.
- I. County anticipates the receipt of revenues from various sources to be used to fund services provided by Contractor through this Agreement. Should planned or actual revenues be less than the amounts anticipated at the time of the signing of this Agreement, the maximum payment obligation and/or payment obligations for specific services may be reduced at the discretion of the Director of Health or designee.
- J. In the event this Agreement is terminated prior to June 30, 2020, the Contractor shall be paid for services already provided pursuant to this Agreement.
- K. Monthly Invoice and Payment
1. Payment by County to Contractor shall be monthly. Contractor shall bill County on or before the tenth (10th) working day of each month for the prior month. Contractor shall submit an original invoice only (faxes are not acceptable), and shall include a summary of services and changes for the month of service. In addition contractor shall provide back-up to the invoice, which shall include individual client days and the level of service provided as well as a monthly admit and discharge sheet.
  2. County reserves the right to modify the description of services as the County deems necessary.
  3. Invoices that are received after the tenth (10th) working day of the month are considered to be late submissions and may be subject to a delay in payment. Invoices may be sent to:

County of San Mateo  
Behavioral Health and Recovery Services  
Attn: Contract Unit  
2000 Alameda de Las Pulgas, Suite 280  
San Mateo, CA 94403

L. Claims Certification and Program Integrity

1. Contractor shall comply with all state and federal statutory and regulatory requirements for certification of claims, including Title 42, Code of Federal Regulations (CFR) Part 438, Sections 438.604, 438.606, and, as effective August 13, 2003, Section 438.608, as published in the June 14, 2002 Federal Register (Vol. 67, No. 115, Page 41112), which are hereby incorporated by reference.
2. Anytime Contractor submits a claim to the County for reimbursement for services provided under Schedule A of this Agreement, Contractor shall certify by signature that the claim is true and accurate by stating the claim is submitted under the penalty of perjury under the laws of the State of California.

The claim must include the following language and signature line at the bottom of the form(s) and/or cover letter used to report the claim:

"Under the penalty of perjury under the laws of the State of California, I hereby certify that the above claim for services complies with all terms and conditions referenced in the Agreement with San Mateo County.

Executed at \_\_\_\_\_, California, on \_\_\_\_\_, 20\_\_\_\_

Signed \_\_\_\_\_ Title \_\_\_\_\_

Agency \_\_\_\_\_"

3. The certification shall attest to the following for each beneficiary with services included in the claim:
  - a. An assessment of the beneficiary was conducted in compliance with the requirements established in this agreement.

- b. The beneficiary was eligible to receive services described in Exhibit A of this Agreement at the time the services were provided to the beneficiary.
- c. The services included in the claim were actually provided to the beneficiary.
- d. Medical necessity was established for the beneficiary as defined under California Code of Regulations, Title 9, Division 1, Chapter 11, for the service or services provided, for the timeframe in which the services were provided.
- e. A client plan was developed and maintained for the beneficiary that met all client plan requirements established in this agreement.

ATTACHMENT E

**FINGERPRINTING CERTIFICATION**

Contractor hereby certifies that Contractor's employees, volunteers, consultants, agents, and any other persons who provide services under this Agreement and who has/will have supervisory or disciplinary power over a child (Penal Code Section 11105.3) (the "Applicant") shall be fingerprinted in order to determine whether each such Applicant has a criminal history which would compromise the safety of children with whom each such Applicant has/will have contact.

Contractor's employees, volunteers, consultants, agents, and any other persons who provide services under this Agreement: (check a or b)

- ☒ a. do NOT exercise supervisory or disciplinary power over children (Penal 11105.3).
- ☐ b. do exercise supervisory or disciplinary power over children (Penal 11105.3).

EVER WELL HEALTH SYTEMS, LLC.

Name of Contractor

  
Signature of Authorized Official

Richard Costery  
Name (please print)

CFO  
Title (please print)

6/5/17  
Date

## ATTACHMENT I

### Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)



a. Employs fewer than 15 persons.



b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Name of Contractor(s):

Ever Well Health Systems, LLC

Street Address or P.O. Box:

391 Front Street, Suite E

City, State, Zip Code:

Grover Beach, CA 93433

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Title of Authorized Official:

Date:

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."