

**AGREEMENT FOR ACUTE PSYCHIATRIC INPATIENT HOSPITAL
SERVICES BETWEEN THE COUNTY OF SAN MATEO AND BHC
FREMONT HOSPITAL, INC. DBA FREMONT HOSPITAL FOR FISCAL
YEAR 2019-2021**

This is an agreement (Agreement) between the County of San Mateo Behavioral Health and Recovery Services (BHRS) Division (County) and BHC Fremont Hospital, Inc. d/b/a Fremont Hospital ("Contractor"), a non-profit corporation, for the provision of Psychiatric Inpatient Hospital Services effective July 1, 2019.

I. RECITALS

- A. Pursuant to certain federal statutes and state statutes, including section 5775, et seq. of the California Welfare and Institutions Code and the regulations promulgated thereunder, agreements between the State of California and County, and certain approvals granted by the Secretary of the United States Department of Health and Human Services through the Centers for Medicare and Medicaid Services (formerly known as Health Care Financing Administration (HCFA), County is authorized to contract for provision of Psychiatric Inpatient Hospital Services (as that term is defined in Appendix A below) to Medi-Cal beneficiaries (herein "Beneficiaries," as defined in Appendix A) in accordance with the rates, terms, and conditions negotiated by County.
- B. Contractor operates a freestanding acute psychiatric hospital with an approved psychiatric unit located at 39001 Sundale Drive, Fremont, CA 94538 (Facility) which presently provides inpatient mental health services.
- C. Notwithstanding that services under this Agreement will be rendered by Contractor to Beneficiaries, it is not the intention of either County or Contractor that such individuals occupy the position of intended third party beneficiaries of the obligation assumed by either party to this Agreement.
- D. The definitions applicable to this Agreement are contained in Appendix A, which is incorporated by this reference.

II. AGREEMENT

IN CONSIDERATION of the foregoing recitals and the covenants and conditions hereinafter expressed, the parties hereby agree as follows:

ARTICLE 1: PERFORMANCE PROVISIONS

1.1 General Agreement

Contractor agrees to provide Psychiatric Inpatient Hospital Services (services) within the scope of its licensure to Beneficiaries in need of such services, and agrees to accept payment from County as payment in full for such services as set forth in this Agreement and the following Appendices attached here to and incorporated herein:

Appendix A: Definitions

Appendix B: Basic Insurance Requirements

Appendix C: Criteria, Policy & Procedure Special Admission

Attachment E: Fingerprinting Certification

Attachment I: Rehabilitation Act Section 504

Contractor cannot look to client for reimbursement for the units of services provided under this Agreement, except as provided under Medi-Cal Share of Cost Regulations. County agrees to pay Contractor as set forth in Article 2. 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 TWO MILLIONTWENTY FOUR THOUSAND SEVEN HUNDRED THIRTY-SIX DOLLARS (\$2,024,736). Contractor's obligations hereunder will include, but will not be limited to, the following:

- (a) Contractor will, at its own expense, provide and maintain space, utilities, equipment and furniture at the Facility as may be necessary to provide services, and to clean and maintain such space, utilities, equipment and furniture in good order and repair.
- (b) Contractor will retain, at its own expense, all such professional, allied and supportive paramedical personnel as may be reasonably necessary and appropriate to provide services.
- (c) Contractor will, at its own expense, provide and maintain the organizational and administrative capabilities to carry out its duties and responsibilities under this Agreement and all applicable statutes and regulations pertaining to Medi-Cal providers.
- (d) Contractor will provide services within the scope of Contractor's licensure to all Beneficiaries who are referred to Contractor by County, unless compelling clinical or operational circumstances exist that contraindicate admission.
- (e) Contractor agrees to obtain consent to treat each Beneficiary in

a specific form or format pursuant to California Welfare and Institutions Code Section 5326.2 or any other applicable statute or regulation.

- (f) Contractor will refer Beneficiaries for other services when necessary.

1.2 Licensure and Certification as Conditions Precedent to County's Payment Obligation

- (a) Contractor hereby represents and warrants that it is currently, and for the duration of this Agreement will and agrees to remain:
 - (1) Duly licensed as either a general acute care hospital with an approved psychiatric unit or a freestanding acute psychiatric hospital as specified in Recital Paragraph B of this Agreement in accordance with Sections 1250 et seq. of the California Health and Safety Code and the licensing regulations contained in Title 22 and Title 17 of the California Code of Regulations.
 - (2) A hospital accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO).
 - (3) Certified to participate in the Medicare program under Title XVIII of the federal Social Security Act.
 - (4) In compliance with all federal Medicaid laws, regulations and guidelines and all applicable Federal and State laws and regulations.
 - (5) A party to a Medi-Cal provider agreement with the Department of Health Care Services.
- (b) Contractor agrees that compliance with the conditions set forth above will be express conditions precedent to County's payment obligations under Paragraph 1.3(a) and Article 2 of this Agreement.
- (c) Contractor will comply with all applicable laws, regulations, and rules relating to the provision of medical and health care services that now exist or are hereinafter modified or adopted, including, without limitation, all permits, licenses, governmental and board approvals. Contractor agrees that it will maintain JCAHO accreditation throughout the term of this Agreement. Contractor

agrees to give County immediate notice of any proceeding that jeopardizes its JCAHO accreditation. This provision is a material term of this Agreement, the breach of which will constitute cause for immediate termination of this Agreement.

1.3 Utilization Controls: Compliance by Contractor as Condition Precedent to County's Payment Obligation

- (a) As express conditions precedent to County's payment obligation under the terms of this Agreement, Contractor will adhere to County's Quality Management Plan including utilization controls, to County's Inpatient Provider Manual, to California Department of Health Care Services Letters and Notices, as well as any requirements imposed on County pursuant to Sections 5777, subdivision (g), and 5778, of the California Welfare and Institutions Code and the implementing Regulations, as well as any other applicable state or federal law governing services rendered under the Medi-Cal program.
- (b) Contractor will comply with existing federal requirements for utilization review pursuant to Title 42, Code of Federal Regulations, Part 456, Subpart D, including but not limited to certification of need for care, evaluation and medical review, plans of care and utilization review plan.
- (c) Contractor shall obtain approval from County prior to implementing a Physician Incentive Plan as described by Title 42, CFR, Section 438.6(h). The County will submit the Physician Incentive Plan to the State for approval. The State shall approve the Contractor's request for a Physician Incentive Plan only if the proposed Physician Plan complies with all applicable federal and state regulations.
- (d) Contractor will comply with the County Policies, Procedures, and directives, as applicable.

1.4 Appointment of Liaison

Contractor will designate in writing a person to act as liaison to the County. Such person will coordinate all communications between the parties. The written designation of such person will constitute the conferral of full agency powers to bind Contractor as principal in all dealings with County to the extent that such dealings relate to this Agreement and/or Contractor's provision of services.

1.5 Service Location

Psychiatric Inpatient Hospital Services rendered pursuant to this Agreement will be rendered at the Facility, unless there has been a delegation approved by County pursuant to Section 4.4.

1.6 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.

1.7 Quality of Care

As express conditions precedent to County payment obligation under the terms of this Agreement, Contractor will:

- (a) Assure that any and all Beneficiaries receive culturally competent services and age- appropriate care as required by the Regulations and consistent with County's Quality Management Plan.
- (b) Take such action as required by Contractor's Medical Staff Bylaws against medical staff members who violate such Bylaws, as the same may be from time to time amended.
- (c) Provide services in the same manner to Beneficiaries as it provides to all patients to whom it renders Psychiatric Inpatient Hospital Services or similar hospital services.
- (d) Not discriminate against Beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or provision of special or separate meals.
- (e) Individual physicians and other mental health professionals will render professional services to eligible voluntary or involuntary clients on the same basis as they care for other clients in Contractor's facility and will not discriminate against these clients in any manner, including admission practices, placement in special wings or rooms, or provision of special or separate meals.
- (f) Attending psychiatrists and psychologists shall be members of the

medical staff of Contractor, be subject to the rules and regulations of said staff and shall also be active contractors with the County. Duration and limitation of services will be under the control of the attending psychiatrist or psychologist but will at all times meet broadly accepted community standards of quality of care and be subject to Contractor utilization review decisions.

1.8 Assumption of Risk by Contractor

Whether rendered directly by Contractor or through delegation by Contractor as permitted under this Agreement, Contractor will bear total risk for the cost of all Psychiatric Inpatient Hospital Services rendered to each Beneficiary covered by this Agreement. As used in this Paragraph, "risk" means that Contractor agrees to accept as payment in full for any and all Psychiatric Inpatient Hospital Services payments made by the or County pursuant to Article 2 of this Agreement, irrespective of whether the cost of such services and related administrative expenses will have exceeded the payment obligation of County under the conditions set forth in this Agreement. The term "risk" also includes, but is not limited to, the cost for all Psychiatric Inpatient Hospital Services for illness or injury resulting, in whole or in part, from a catastrophe or disaster which occurs subsequent to the Effective Date (as defined in Section 4.1 below), including but not limited to acts of God, war or the public enemy.

1.9 Patient's Rights

- (a) Contractor or any Delegate providing services pursuant to the terms of this Agreement will adopt and post in a conspicuous place a written policy on patient's rights in accordance with section 70707 of Title 22 of the California Code of Regulations and section 5325 et seq. of the California Welfare and Institutions Code. All complaints by Beneficiaries with regard to services provided hereunder may be investigated by County's Patient Rights Advocate, County, California Department of Health Care Services or by the Joint Commission on Accreditation of Health Care Organization, or such other agency, as required or permitted by law or regulations.
- (b) Contractor will maintain throughout the term of this Agreement a process for the resolution of Beneficiary complaints and grievances. Contractor agrees to cooperate with County with respect to the complaint resolution and grievance process maintained by County pursuant to the Regulations.
- (c) Contractor agrees to provide Medi-Cal clients who are new to the Mental Health System with a brochure (an original of which shall

be provided by County) when a client first receives a specialty mental health service from the Contractor. Such brochure shall contain a description of County services available; a description of the process for obtaining County services, including the County's state-wide toll-free telephone number; a list of the County's providers; a description of the County's beneficiary problem resolution process, including the complaint resolution and grievance processes; and a description of the beneficiary's right to request a fair hearing at any time before, during or within 90 days after the completion of the beneficiary problem resolution process.

1.10 Inadequate Performance

If County of Contractor finds that performance is inadequate, at the County's discretion, a meeting may be called to discuss the causes for the performance problem, to review documentation, billing and/or other reports, and to take appropriate corrective action, as needed, to resolve any identified discrepancies. This Agreement may be renegotiated, allowed to continue to end of term, or terminated pursuant to Paragraph 4.2 of this Agreement. Any unspent monies due to performance failure may reduce the following year's agreement, if any.

1.11 Consultation Requirements Regarding Adults on the Adolescent Unit

Contractor will notify the County Behavioral Health Director, or his/her designee.

1.12 Outcome Objectives

- (a) For completed episodes, there will be no more than ten percent (10%) recidivism of clients within thirty (30) days following discharge.
- (b) For completed episodes, Contractor will maintain or reduce the 2017-2018 combined average length of stay. Contractor will make best efforts to meet such goals, but failure to meet any or all of these goals does not constitute a breach, material, or otherwise of the Agreement. County's payment obligation is in no way contingent on meeting any of the stated goals.

1.13 Discharge Procedures

- (a) Contractor shall communicate to County the scheduled discharge date and time in advance of the discharge to the County Adult Resource Management (ARM) Nurse for adult patients, and Youth

Case Management for youth and adolescent patients, who will coordinate discharge planning and activities on behalf of the County. It is preferred that the ARM Nurse and Youth Case Management become involved in the planning for a discharge at least three days before the discharge.

- (b) Discharge coordination can be initiated directly with the ARM Nurse, Youth Case Management, or for adults through the Access Call Center at 800-686-0101. Calls into the Call Center for discharges are automatically prioritized to the front of the queue and answered by the next available clinician.
- (c) Coordination of medications is critical to discharge planning and for patients known to the County the first follow up appointment post discharge must be a face to face appointment for Medication Support. For new patients, this first appointment is an assessment and/or PIN appointment. In either scenario, the amount of prescription medications provided upon discharge must be sufficient to treat the patient up to and through the first appointment. Therefore, the follow up appointment must be determined in order to prescribe an adequate quantity of medication for the patient prior to discharge.
- (d) The hospital discharge nurse shall contact the Access Call Center to request an appointment as the first follow up appointment for the discharged patient. This appointment must be scheduled, and the patient informed prior to discharge.
- (e) If the patient is to be discharged with medications, when contacting the Access Call Center or the Arm Nurse, or Youth Case Management, request identification and coordination of the treating MD for the County to facilitate a Doctor to Doctor consultation prior to or immediately following discharge.
- (f) The Access Call Center, the ARM Nurse, or Youth Case Management will identify information needed for the specific patient to be discharged. This includes at a minimum a discharge summary consisting of diagnosis and prognosis, medications and dosage, practitioner name and contact information, natural supports name and contact information, and summary or attached discharge plan inclusive of step down detail.
- (g) Patients known to the County shall be discharged as a warm hand off to the County by the presence of a County representative present at the time of discharge. If a representative cannot be

present, the discharge must be coordinated to assure adequate transportation and placement to the next level of care. Under no circumstances can a patient be discharged with no County representative present unless previously coordinated with the County.

ARTICLE 2: PAYMENT PROVISIONS

2.1 Rate Structure; Contingent Liability of County

(a) Subject to the conditions precedent set forth in this Agreement and provided that claims are submitted in accordance with the provisions of Paragraph 2.6 of this Agreement, Contractor will be paid at the all-inclusive rate for each Day of Service (as defined in Paragraph 2.3 (c) below) that Contractor renders Acute Psychiatric Inpatient Hospital Services to a Medi-Cal Beneficiary or to an Indigent Patient (for whom the County has assumed responsibility) at the rate of:

i. **July 1, 2019 through June 30, 2020 “host county” per diem Short-Doyle rates:**

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

\$1,480 per day for children & adolescents (\$1,365 Facility Fee, \$115 Professional Fee)

ii. **July 1, 2019 through June 30, 2020 MediCal inpatient psychiatric per diem rates:**

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

\$1,480 per day for children & adolescents (\$1,365 Facility Fee, \$115 Professional Fee)

iii. **July 1, 2019 through June 30, 2020 Indigent inpatient psychiatric per diem rates:**

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

iv. **July 1, 2020 through June 30, 2021 “host county” per**

diem Short-Doyle rates:

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

\$1,480 per day for children & adolescents (\$1,365 Facility Fee, \$115 Professional Fee)

v. July 1, 2020 through June 30, 2021 MediCal inpatient psychiatric per diem rates:

\$1,318 per day for adults ages 18-21 and 65+ (hospital only)

\$1,365 per day for children and adolescents (hospital only)

vi. July 1, 2020 through June 30, 2021 Indigent inpatient psychiatric per diem rates:

\$1,318 per day for adults ages 18-21 and 65+ (hospital only)

(b) Maximum Obligation

In no event shall County's total fiscal obligation under this Agreement exceed TWO MILLION TWENTY-FOUR THOUSAND SEVEN HUNDRED THIRTY-SIX DOLLARS (\$2,024,736). 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.

(c) Subject to the conditions precedent set forth in this Agreement and provided that claims are submitted in accordance with Paragraph 2.6 of this Agreement and the requirements of Section 2.7 of this Agreement are met, Contractor will be paid at the all-inclusive rate for each Administrative Day which is specified by the Regulations and there will be no additional payment for ancillary services.

(f) Subject to the conditions precedent set forth in this Agreement, Contractor will be paid at the Special Admission Services Rate

of:

i. July 1, 2019 through June 30, 2020

Adolescent (ages 6-17)

\$1,485 per day (\$1,365 Facility Fee, \$120 Professional Fee)

ii. July 1, 2020 through June 30, 2021

Adolescent (ages 6-17)

\$1,485 per day (\$1,365 Facility Fee, \$120 Professional Fee)

For those individuals designated by the County to fit the criteria for Special Admission Services Rate at the time of admission as described in Appendix C, this Special Admission Rate is inclusive of all Psychiatric Inpatient Hospital Services including Routine Services, all Hospital-Based Ancillary Services (as those terms are defined in the Regulations), and physician or psychologist services rendered to patients covered under this Agreement. The Special Admission Rate does not include transportation services required in providing Psychiatric Inpatient Hospital Services. For an individual to be designated for potential payment under this Special Admission Services Rate, he or she must be approved at the time of admission by the County's designee as described in the protocols in Appendix C. Contractor must submit a Treatment Authorization Request (TAR) and comply with all applicable Medi-Cal regulations for those Special Admission Services Rate designated individuals that have Medi-Cal. If days are denied through the regular TAR process, then Contractor may submit a claim for the day(s) denied as described in Appendix C.

2.2 Rate Inclusive of All Psychiatric Inpatient Hospital Services; Rate Does Not Include Physician, Psychologist, or Transportation Services for Medi-Cal Beneficiaries, or Indigent Patients

The rates set forth in Paragraph 2.1 of this Agreement for Medi-Cal Beneficiaries or Indigent Patients are inclusive of all Psychiatric Inpatient Hospital Services including Routine Services and all Hospital-Based Ancillary Services (as those terms are defined in the Regulations), but do not include physician or psychologist services rendered to beneficiaries covered under this Agreement, or transportation services (CCR Title 9, Chapter 11, section 1810.355 (a) (1)(B)) required in providing Psychiatric Inpatient Hospital Services, and such physician, psychologist and transportation services

will not be paid for or reimbursed by County under this Agreement.

2.3 Billing Procedures as Express Conditions Precedent to County's Payment Obligation

- (a) As an express condition precedent to County's payment obligation under Paragraph 2.1 of this Agreement, Contractor will use its best effort to determine whether Psychiatric Inpatient Hospital Services rendered hereunder are covered, in whole or in part, under any other state or federal medical care program or under any other contractual or legal entitlement, including, but not limited to, a private group indemnification or insurance program or workers' compensation (herein, Third Party Payors).
- (b) As a further express condition precedent to County's payment obligation under Paragraph 2.1 of this Agreement, Contractor will bill its Customary Charges (as defined in the Regulations) and submit claims to the Fiscal Intermediary for all Psychiatric Inpatient Hospital Services hereunder rendered in accordance with the applicable billing requirements contained in Section 5778 of the California Welfare and Institutions Code and the Regulations, using the number assigned by the Medi-Cal program to Contractor and using the Allowable Psychiatric Accommodation Codes set forth in the Regulations.
- (c) A Day of Service will be billed for each Beneficiary who meets admission and/or continued stay criteria, documentation requirements, treatment and discharge planning requirements and occupies a psychiatric inpatient hospital bed at 12:00 midnight in the Facility and for which the appropriate authorization has been granted, excluding the day of discharge.
- (d) Contractor will bill any Third-Party Payor financially responsible for a Beneficiary's health care services. County accepts no financial responsibility for services provided to Beneficiaries where there is a responsible Third-Party Payor, and to the extent that County inadvertently makes payment to Contractor for such services rendered, County will be entitled to recoup such reimbursement.
- (e) In regard to Medi-Cal patients for whom Third Party Payors have financial responsibility, the County will approve reimbursement to Contractor at its per diem rates as set forth in Paragraph 2.1 less the net of liability of Third Party Payors and patient share of costs. County will not be responsible to provide or arrange and, pay for acute inpatient mental health services provided to a beneficiary

eligible for Medicare, prior to the exhaustion of beneficiary's Medicare mental health benefits.

It is understood that any payments received from County or third-party insurers for services rendered under this Agreement shall be considered as payment in full and Contractor cannot look to the client for reimbursement for the units of service provided under this Agreement, except as provided for under Medi-Cal Share of Cost regulations.

- (f) Non-Payment to Entity/Provider Pursuant to Title 9, CCR, Section 1810.365, Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor will not submit a claim to demand or otherwise collect reimbursement from the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this Agreement except to collect other health insurance coverage, share of cost and co-payments. The Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor will not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State and/or County does not pay the Contractor or an affiliate, vendor, contractor, or sub-subcontractor, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

2.4 County May Withhold Payment

Contractor shall provide all pertinent documentation required for federal Medi-Cal reimbursement (including initial and quarterly notices, assessment and service plans, and progress notes). The County may withhold payment for any and all services for which the required documentation is not provided, or if the documentation provided does not meet professional standards as determined by the Quality Improvement Manager of the San Mateo County Behavioral Health and Recovery Services Division of the Health System.

2.5 Recovery of Overpayment to Contractor, Liability for Interest

- (a) When an audit or review performed by County, by the California Department of Mental Health ("Department"), the California Department of Health Care Services ("DHCS"), the California

Controller's Office, or any other authorized agency discloses that Contractor has been overpaid under this Agreement, or that the total payments exceed the total liability under this Agreement, Contractor covenants that any such overpayment or excess payments over liability may be recouped by the County withholding the amount due from future payments hereunder, by seeking recovery by payment from Contractor, or a combination of these two methods.

- (b) Overpayments determined as a result of audits of periods prior to the effective date of this Agreement may be recouped by the County withholding the amount due from what would otherwise be the County's liability under this Agreement, by seeking recovery by payment from Contractor, or a combination of those two methods.
- (c) When recoupment or recovery is sought under 2.4(a), Contractor may appeal according to applicable procedural requirements of the Regulations and the regulations promulgated under Section 14680, et of California Welfare and Institutions Code, except that the recovery or recoupment will commence sixty (60) days after issuance of account status or demand resulting from an audit or review and will not be deferred by the filing of an appeal in accordance with the applicable regulations.
- (d) Contractor will be liable to County for the amount of any federal audit exceptions or disallowances or any sanctions or withholding of funds of the Department or by DHS as provided in Sections 5778 Subdivision (h), and 5779 Subdivision (e), of the Welfare and Institutions Code and the Regulations, to the extent that such exceptions, disallowances, sanctions or withholding of funds relate to services rendered under this Agreement.

2.6 Customary Charges Limitation

Notwithstanding any other provision in this Agreement, County's total liability to Contractor will not exceed Contractor's total Customary Charges for Psychiatric Inpatient Hospital Services for each year in which this Agreement is in effect. County may recoup any excess of total payments above such total customary charges for Psychiatric Inpatient Hospital Services under Paragraph 2.4. As used in this Paragraph, Customary Charges will have the meaning ascribed to that term in the Regulations.

2.7 Treatment Authorization and Claims Submission

As an express condition precedent to County's payment obligations hereunder, Contractor will obtain approval of a Treatment Authorization Request (TAR) for each Day of Service rendered to a Beneficiary. The treatment authorization process will take place either prior to admission or after discharge, as set forth below:

- (a) **Preauthorization for Planned Admission.** Contractor will obtain preauthorization up to seven (7) days in advance for admission of a Beneficiary for Acute Psychiatric Inpatient Hospital Services by submitting to County's Point of Authorization a TAR and such related documentation as may be specified by County in accordance with the applicable Regulations. When deemed necessary by County, County review of a TAR may include a psychiatric evaluation examination of the Beneficiary conducted at the time and place specified by County. If required, County will notify the attending physician and Beneficiary of the examination. If the medical necessity criteria set forth in the Regulations are met, County will approve the TAR and give preauthorization for payment for a specified number of Days of Service, not to exceed one (1) calendar month. County will notify Contractor of its approval or disapproval of a TAR in writing within fourteen (14) calendar days of County's actual receipt of such TAR. Approval is effective, if granted, up to seven (7) calendar days in advance of the provision of services. All adverse decisions of County will be reviewed and approved by a County authorized physician. Contractor may appeal an adverse decision through the provider appeal process set forth in the Regulations. If the TAR is denied prior to hospitalization, County will notify the Beneficiary within ten (10) calendar days.
- (b) **Authorization for Payment for Emergency Admission.** Payment authorization for emergency admissions will be exempt from preauthorization set forth in Paragraph 2.7(a) above but will be subject to the provisions set forth in this Paragraph 2.7(c). Contractor will notify the County's Point of Notification and Point of Authorization within twenty-four (24) hours or the next business day of the time of the admission of the Beneficiary to the Facility. A TAR for emergency admission and such related documentation as may be specified by the County will be submitted by the Contractor to the Point of Authorization after discharge of the Beneficiary, but no later than fourteen (14) calendar days following discharge. County will authorize payment for the emergency services received pursuant to the emergency admission if the clinical record documents that:

- (c) Authorization for Emergency Admission. Contractor will notify the County's Adult Resource Management Team (650-372-8573) within 24 hours or the next business day of the time of the admission of the Beneficiary to the Facility. A TAR for emergency admission and such related documentation as may be specified by the County will be submitted by the Contractor to the County's Quality Management Office after discharge of the Beneficiary, but no later than fourteen (14) calendar days following discharge. Contact information for BHRS Quality Management is as follows:

BHRS Quality Management
Attn: Holly Severson, RN MSN
1950 Alameda de las Pulgas, Suite 157
San Mateo, CA 94403
Phone: 650-573-2996
Fax: 650-525-1762
Email: hseverson@smcgov.org

County will authorize payment for the emergency services received pursuant to the emergency admission if the clinical record documents that:

- (1) The medical necessity criteria set forth in the Regulations are met.
 - (2) The criteria for an emergency psychiatric condition set forth in the Regulations were met at the time of admission.
 - (3) The County was notified within 24 hours or the next business day from the presentation for emergency services. If notice exceeds 10 calendar days, County may deny payment to Contractor.
 - (4) The TAR and related documentation were received no later than 14 calendar days following discharge.
- (d) Admission of County beneficiaries that were not referred through SMMC PES or diverted County Beneficiaries must be reported to the County's Point of Notification at the time of admission or diversion.

(e) Transitional Services

Transitional Services means services lasting less than twenty-four (24) hours to a client for a condition, which require more timely response than a regularly scheduled visit. Service activities may include, but are not limited to, assessment.

County is responsible for authorization of payment for transitional services provided within Contractor's emergency room solely under the conditions described in this Agreement and the Transitional Services Protocol, described in this section. Payment for transitional services will not include ancillary services. Contractor shall communicate with San Mateo County Medical Center (SMMC) Psychiatric Emergency Services (PES) and submit notifications and other documentation as described.

Transitional Services Protocol

- (1) All services claimed shall be provided in Contractor's Emergency Room.
- (2) For Beneficiaries admitted into a psychiatric bed at Mills-Peninsula Hospital, no transitional services may be claimed
- (3) For Beneficiaries assessed at Contractor's Emergency Room and discharged for whatever reason without admission into an inpatient bed, no transitional services may be claimed.
- (4) Medical Necessity for Inpatient Hospitalization shall be assessed by Contractor's staff. When a client meets medical necessity criteria but is capable of transport (not an emergency admission):
 - San Mateo County PES shall be informed by a notification form within three (3) hours of Beneficiary admission to Contractor's Emergency Service; PES determines where admission should occur.
 - If at the Contractor's Facility (and Contractor agrees), client is admitted, and no transitional services is claimed.
 - If at SMMC (or other hospital), Contractor's Emergency Services will be informed that client will

- be transported.
- (5) Contractor's Emergency Services documents time of agreement to transport by PES on notification form.
 - (6) Contractor's Emergency Services notes time of ambulance arrival on notification form and documents it in the medical chart.
 - (7) In the situation where PES wishes to assess a client but requests a delayed transport, the same notification form verification process will occur.
 - (8) For clients to be transferred, claims will be paid for the elapsed time, from Contractor's call to PES, which results in an ambulance dispatch, to time of ambulance arrival at Contractor's Emergency Services, rounded to the nearest hour, except that claim for less than one (1) hour may round up to one (1) hour.
 - (9) Any claim for transitional services must be accompanied by a notification form indicating elapsed time
 - (10) In the case of disagreements with allowed claims, Mental Health Plan (MHP) Quality Improvement staff will review notification form and chart notes in an effort to reconcile the discrepancy. Contractor may appeal the findings of this review to the BHRS Director. Since these services are not claimed to Medi-Cal, no state appeal process may be applied.
- (f) Authorization for Payment for Continued Stay Services. To the extent permitted by federal and state law, TAR for Continued Stay services will be submitted only after discharge of the Beneficiary, but no later than fourteen (14) calendar days after discharge of the Beneficiary from the Facility; except that, notwithstanding the foregoing, Contractor will submit a TAR within fourteen (14) days of the completion of ninety-nine (99) calendar days of continuous services to a Beneficiary. Payment authorization will be obtained through submission of a TAR and such related documentation as may be specified by the County to County's Quality Management Office (650-573-2996). If the medical necessity criteria set forth in the Regulations are met, the TAR will be approved. County will notify Contractor of its decision no later than fourteen (14) calendar days after the County's actual receipt of the TAR. County will provide a copy of the authorized or

denied TAR to Contractor. All adverse decisions will be reviewed and approved by a County authorized physician. Contractor may appeal an adverse decision through the appeal process set forth in the Regulations.

- (g) For Medi-Cal Beneficiary within the age range of 21-64 (IMD Exclusion), the UB04 Form, instead of TAR, will be submitted. The medical necessity criteria, timeline, and submission procedure are the same as described in Paragraph 2.7(b).
- (h) Timeliness. A TAR may be denied by County if it is not submitted in accordance with the timing requirements contained in this Paragraph 2.7, unless Contractor was prevented from submitting a timely TAR due to the circumstances specified in the Regulations.
- (i) Claims Submission. Claims for payment for services rendered pursuant to this Agreement will be submitted by the Contractor to the Fiscal Intermediary in accordance with the requirements set forth in Sections 51008 and 51008.5 of Title 22 of the California Code of Regulations. If the TAR is approved by County as provided in this Paragraph, County will submit a copy of such approval to the Fiscal Intermediary. The Fiscal Intermediary will make the payments required hereunder to Contractor on behalf of County.

2.8 Adverse Decisions

All adverse decisions of County will be reviewed and approved by a County authorized physician. Contractor may appeal an adverse decision through the provider appeal process set forth in the Regulations.

2.9 Professional Fee Claims

- (a) Contractor shall provide notice to any physician credentialed and/or privileged and/or contracted to provide services at the Facility that Contractor will require provider to bill pro fees independently, the following instructions: Professionals claiming fees directly to the County must account for the duration of a claimed service in minutes and maintain supporting documentation. In Section 240 (Procedure/CPT code) of the HCFA 1500 form the duration of the service in minutes must be entered in the modifier column. The minutes of service must match the minutes of service in the progress note maintained by the professional.

- (b) Contractor shall provide notice to these same credentialed professionals that all providers of service that bill the County shall provide initially with their claim and then upon any change thereafter, the following information to the extent not included or completed on the HCFA 1500:
 - 1) Provider Name and NPI; 2) Provider office address and contact info; Indicate if service billed is office or satellite; 3) Licensure Number, Type, and name of Certification Board (or board certified yes or no); 4) Name of University graduated from; 5) Social Security Number; 6) Date of Birth; 7) DEA number if applicable; 8) Average number of hours available to Medi-Cal patients per week; 9) Age groups served; 10) Specialized skills; 11) Language Capacity; 12) Proficiency Level of Language (Fluent, Good, Fair, Poor); 13) Cultural Competency Trained (yes or no); and 14) Total hours of Competency Training in the last year.
- (c) In consideration of this Section 2.9, should Contractor fail to notify any billing professional of the requirements set forth in paragraphs 2.9(a) and 2.9(b) resulting in claims received by the County without the accompanying information required in this section, said claims will be denied and the submitting professional shall be redirected to the Contractor for settlement of any denied claims. County will accept resubmission of claims denied under this section that are accompanied with the information required by this section.

2.10 Authorization for Administrative Days

Payment for Administrative Days hereunder is expressly conditioned upon Contractor's compliance with the following provisions in addition to the provisions of Paragraph 2.6 above and the definition of "Administrative Day" included in Appendix A.

ADULTS:

- (a) For patients requiring care in an Institution for Mental Diseases (IMD) or at the State Hospital, approval must be granted from the County's Mental Health Director or her designee. This approval must then be reflected in the medical record documentation. The medical record must reflect that the patient was admitted to the first available IMD or State Hospital bed.
- (b) For patients requiring care in the crisis residential system, approval must be granted by BHRS or any other program designated by County, as appropriate. The medical record documentation must reflect that approval has been granted. Further, there must be a daily entry (seven days per week) indicating the bed availability at

the crisis residential program. The medical record must reflect that the patient was admitted to the first available crisis residential bed.

- (c) For patients who are to be placed in a skilled nursing facility, the medical record must reflect that at least five appropriate facilities within a 60-mile geographic radius per week are contacted for admission request. The medical record must reflect that the patient was admitted to the first available appropriate bed.

2.11 Contractor Appeal Process

Contractor may file an appeal concerning the processing or payment of its claims hereunder for Psychiatric Inpatient Hospital Services directly to the Fiscal Intermediary in accordance with the procedures set forth in the Regulations.

2.12 Anticipated Revenues

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 Chief of the Health or designee.

ARTICLE 3: RECORDS AND AUDIT PROVISIONS

3.1 Medical Records Documentation for Adults

- (a) For patients requiring care in an Institution for Mental Diseases (IMD) or at the State Hospital, approval must be granted from the County's Behavioral Health and Recovery Services Director or his/her designee. This approval must then be reflected in the medical record documentation. The medical record must reflect that the patient was admitted to the first available IMD or State Hospital bed.
- (b) For patients requiring care in the crisis residential system, approval must be granted by Momentum for Mental Health or any other program designated by County, as appropriate. The medical record documentation must reflect that approval has been granted. Further, there must be a daily entry (seven (7) days per week) indicating the bed availability at the crisis residential program. The medical record must reflect that the patient was admitted to the first available crisis residential bed.

- (c) For patients who are to be placed in a skilled nursing facility, the medical record must reflect that at least five appropriate facilities within a 60-mile geographic radius per week are contacted for admission request. The medical record must reflect that the patient was admitted to the first available appropriate bed.

3.2 On-site Reviews

- (a) County, the California Department of Mental Health and/or the California Department of Health Care Services will conduct periodic audits or reviews, including on-site audits or reviews, of performance under this Agreement. These audits or reviews may evaluate the following:
 - (1) Level and quality of care, and the necessity and appropriateness of the services provided.
 - (2) Internal procedures for assuring efficiency, economy and quality of care.
 - (3) Compliance with County Client Grievance Procedures.
 - (4) Financial records when determined necessary to protect public funds.
- (b) Contractor will make adequate office space available for the review team or auditors to meet and confer. Such space must be capable of being locked and secured to protect the work of the review team or auditors during the period of their investigation.
- (c) On-site reviews and audits will occur during normal working hours with at least 72-hour notice, except that unannounced on-site reviews and requests for information may be made in those exceptional situations where arrangement of an appointment beforehand is clearly not possible or clearly inappropriate due to the nature of the intended visit.

43.3 Records to be Kept; Audit or Review: Availability, Period of Retention Contractor covenants and agrees that:

- (a) It will maintain books, records, documents, and other evidence, accounting procedures, and practices sufficient to reflect properly all direct and indirect costs of whatever nature incurred in the performance of this Agreement.

- (b) The above information will be maintained in accordance with Medicare principles of reimbursement and generally accepted accounting principles and will be consistent with the requirements of the Office of Statewide Health Planning and Development.
- (c) Contractor will also maintain medical records required by Sections 70747 through 70751 of Title 22 of the California Code of Regulations, and other records related to a Beneficiary to whom the service was rendered, the date of the service, the medical necessity of the service and the quality of the care provided. All such records will be maintained in accordance with Section 51476 of Title 22 of the California Code of Regulations. Notwithstanding the foregoing, Contractor will maintain Beneficiary medical and/or clinical records for a period of 10 years, except that the records of persons who are under the age of 18 at the time of treatment will be retained until either: (a) one year beyond the person's 18th birthday or (b) for a period of 10 years from the date of discharge, whichever period is later.
- (d) The Facility and the information specified in this Paragraph will be subject at all reasonable times to inspection, audits and reproduction by any duly authorized agents of the County, State and Federal governments. Contractor agrees to allow the County, State, and federal agencies including the Director, and/or any designated auditor of County, the State of California, including but not limited to officials from the State Department of Mental Health or the State Department of Health Services, any designated official of the Department of Health and Human Services, the Comptroller General of the United States, or the fiscal intermediary, the right to inspect or otherwise evaluate the cost, quality, appropriateness, and timeliness of services performed and to audit and inspect any books and records of Contractor which pertain to services performed and/or determinations of the amounts payable under this Agreement. Copies of records will be made available upon County's requests for copies of Contractor's records.
- (e) Contractor will preserve and make available its records relating to payments made under this Agreement for a period of ten years from the close of Contractor's fiscal year, or for such longer period, required by subparagraphs (1) and (2) below.
 - (1) If this Agreement is terminated, the records relating to the performance of Contractor's obligations hereunder will be maintained by Contractor and made available for a period of 4 years from the date of the last payment made under the

Agreement; or

- (2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 4-year period, the related records will be retained until expiration of the 4 year period following the completion and resolution of all issues arising there from; whichever is later.
- (f) Contractor will provide to each Beneficiary for completion a patient satisfaction survey form or perform a phone survey. Utilization of a research firm to perform this function is acceptable. The results of such surveys for each calendar year will be compiled and provided to County within 60 days of any calendar year-end.
- (g) Contractor will complete such forms as County reasonably may require regarding Performance Outcome Measures for each Beneficiary.

3.4 Liability of Delegates for Examination of Accounts, Audit and Records

County will have such rights as are accorded to it as an intended third-party beneficiary of a covenant made in a contract of delegation, pursuant to Paragraph 4.4 below.

3.5 Confidentiality of Information

- (a) Contractor will maintain adequate medical, clinical, and/or rehabilitative records on each patient, as indicated by the program type. The records will include diagnostic studies and a record of services provided to the patient and will be in sufficient detail to facilitate an evaluation of the services provided. The records will contain all data necessary to prepare reports to the State Department of Mental Health, and will include, but not be limited to, coordinated services plans, records of patient interviews, and progress notes.
- (b) Patient records will be subject to the confidentiality and disclosure provisions of applicable local, State and Federal laws, statutes and regulations including Welfare and Institutions Code Section 5328, Evidence Code Section 1010 et seq., Title 45, Code of Federal Regulations Section 205.50; and 14100.2 of the Welfare and Institutions Code; and regulations promulgated thereunder. For the purpose of this Agreement, all information, records, and data elements pertaining to Beneficiaries will be protected by Contractor from unauthorized disclosure.

- (c) With respect to any identifiable information concerning Beneficiaries under this Agreement that is obtained by Contractor or its delegates, Contractor:
- (1) Will not use any such information for any purpose other than carrying out the express terms of this Agreement;
 - (2) Will maintain standard consent forms for patients to use when requesting disclosure of records;
 - (3) Will maintain written procedures on the retention and disclosure of patient records;
 - (4) Will not disclose, except as otherwise specifically permitted by law, any such information to any party other than County or entities to whom the information may be released under Title 45, Code of Federal Regulations Section 205.50; Sections 5328 and 14100.2 of the California Welfare and Institutions Code; and regulations promulgated thereunder; and
 - (5) Will retain all such information for purposes of audit and inspection.

ARTICLE 4: TERMINATION, DELEGATION, OR ASSIGNMENT

4.1 Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2019 through June 30, 2021.

4.2 Termination

(a) Termination Without Cause

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 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.

(b) 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.

(c) Termination of Agreement

Upon termination of this Agreement, Contractor will provide BHRS Contracts Administration with a current list of San Mateo County beneficiaries who received mental health services from Contractor or who were seen on a regular basis by Contractor. This information must be provided to MHD's Contract Administration within three (3) days from the date on the termination notice. The list will include the beneficiary names, recent phone number and address.

(d) Contingency

This Agreement is contingent upon the appropriation of sufficient funding by the Federal, State and county sources for the services covered by this Agreement. If it becomes apparent to County at any time, in County's sole discretion, that insufficient funding will exist, or that funding from any source will be discontinued, delayed, denied, reduced, or disallowed for any of the services covered under this Agreement, County has the option to either terminate this Agreement without notice with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.

4.3 Conflict of Interest

Contractor will comply with all applicable Conflict of Interest provisions. County may terminate this Agreement immediately if County determines that there is a violation of the California Political Reform Act contained in

California Government Code Sections 87101 et seq. and the regulations promulgated thereunder.

4.4 Delegation of Contractor's Duties: When Permitted

- (a) Contractor and County recognize that the Psychiatric Inpatient Hospital Services to be provided hereunder are non-delegable except as provided in this Paragraph 4.4. Any attempt by Contractor to delegate or otherwise vest responsibility for performance of its duties hereunder in any manner other than those expressly permitted in this Paragraph will constitute a material breach of this Agreement.
- (b) Any delegation will require the prior written approval of County. Such prior written approval must be requested in a written application which identifies the proposed Delegate, warrants its qualifications to render services required by and in conformity with the terms of this Agreement, and identifies the specific categories of services to be delegated along with an estimate of the percentage of such services in those categories which Contractor anticipates will be rendered by the Delegate. The ability of Contractor to demonstrate that a proposed delegation does not offend the express proscriptions of this Paragraph will not bind County to grant approval of any delegate. The County's approval hereunder is contingent upon County's assessment of the burdens and benefits to the Medi-Cal program and to potentially affected Beneficiaries of that program.
- (c) All costs for services rendered by any Delegate are included in the rates paid to Contractor pursuant to Article 2 of this Agreement.
- (d) Notwithstanding subparagraph (b) of this Paragraph, no delegation will be attempted or entered into if:
 - (1) The Delegate is not licensed and certified to the same extent as that required of Contractor under Paragraph 1.2 of this Agreement; or
 - (2) The location at which the Delegate is to perform the delegated services is at such a distance from the Facility that it is beyond the range considered acceptable in the industry for provision of the delegated services or, in the opinion of County, will unnecessarily or unduly burden affected Beneficiaries.

- (e) Notwithstanding authorization under (b) of this Paragraph, Contractor will be responsible for all aspects of performance hereunder by any Delegate. Contractor hereby agrees that any default, refusal to perform or defective performance of any delegated duty or service will constitute a breach of this Agreement to the same extent as if such default, refusal to perform or defective performance had been directly committed or incurred by Contractor.

4.5 Delegation of Contractor's Duties: How Accomplished

In any delegation authorized under Paragraph 4.4(b), Contractor will contract in writing with the Delegate for performance of the duties to be performed by the Delegate, and any such written contract of delegation will include the following terms:

- (a) Covenants on the part of Contractor and the Delegate that the contract of delegation will be governed by and construed in accordance with all applicable laws and regulations and Contractor's obligations under this Agreement;
- (b) Specification of the service to be provided by the Delegate;
- (c) Specification of the term of the contract of delegation including the beginning and ending dates, as well as methods of extension, renegotiation and termination;
- (d) A warranty by the Delegate that it presently complies with, and a warranty and agreement that during the life of the delegation the Delegate will continue to comply with the licensure and certification requirements set forth as to Contractor under Paragraph 1.2 of this Agreement;
- (e) That the prior written authorization of County will be required as an express condition precedent to any amendment, rescission, abandonment or waiver of the contract of delegation;
- (f) A covenant running to County as an intended third-party beneficiary of the contract of delegation whereby the Delegate promises:
 - (1) To maintain, for at least 4 years after the close of the fiscal year in which the contract of delegation was in effect, full books and records pertaining to the goods and services furnished under the terms of the delegation in accordance

with general standards applicable to such book and record keeping;

- (2) To make the books and records maintained under (1) of this subparagraph available for inspection, examination or copying by agents of federal, state, and local agencies as set forth in Paragraph 3.2;
- (3) To make full disclosure to County of the method and amount of compensation and/or other direct or indirect consideration received by the Delegate from Contractor.
- (4) That no services rendered on behalf of Contractor by the Delegate pursuant to the contract of delegation will be billed to County or the fiscal intermediary by the Delegate, who warrants and agrees that it will look exclusively to Contractor for compensation under the terms of the contract of delegation
- (5) To hold harmless County, Department, DHS, the State of California and Beneficiaries in the event that Contractor cannot or will not pay for services performed by the Delegate pursuant to the terms of the contract of delegation.

4.6 Restriction on Contractor's Freedom to Assign Benefits Only Under this Agreement or to Engage in Organic Change

County and Contractor hereby declare their mutual recognition that the subject matter of this Agreement is personal, being founded upon County's confidence in the reputation, type and location of facilities, and other personal attributes of Contractor. For this reason:

- (a) Unless given prior written approval by County, any attempt by Contractor to make an assignment of the right to receive the contingent payment obligations of County under this Agreement will discharge County from what may otherwise have been a matured obligation of performance.
- (b) If Contractor desires to make an assignment of rights only under this Agreement, it will submit a written application for approval to County. Such an application will identify the proposed assignee and include a detailed explanation of the reason and basis for the proposed assignment. If County is satisfied that the proposed assignment is consistent with law and with the continued

receipt of satisfactory performance, the assignment will be approved in writing. The effective date of the assignment will be the date upon which County issues written approval.

- (c) Unless given prior written approval by County any attempt by Contractor to participate as a constituent entity in any merger, consolidation or sale of assets will operate as an assignment hereof and will discharge County from what may otherwise have been a matured obligation of performance under this Agreement.
- (d) If Contractor desires to participate as a constituent entity in any merger, consolidation or sale of assets it will submit a written application for approval to County. County will act upon such requests within 30 days of the receipt of such request.
 - (1) If approval is sought for participation in a merger or consolidation, the application will identify all proposed constituent entities and disclose the rights and preferences of all classes of stock in the resulting or surviving entity. In addition, the application will inform County of the licensure and certification status of the proposed resulting or surviving entity and such other information as County may require.
 - (2) If application is sought for approval of a sale of assets, such application will identify the purchaser, inform County of licensure and certification status of the purchaser and contain such other information as County may require.
 - (3) If County is satisfied that the proposed merger, consolidation or sale of assets other than in the regular course of business is consistent with the continued satisfactory performance of Contractor's obligations under this Agreement, it will be approved in writing. The effective date of the merger, consolidation or sale of assets other than in the regular course of business will be no earlier than the date upon which County issues written approval.

ARTICLE 5: GENERAL PROVISIONS

5.1 Reports

Contractor will provide County with any reports, as determined to be necessary, by the Mental Health Director or his/her designee.

5.2 Advance Directives

Contractor will comply with County Policies and Procedures regarding advance directives.

5.3 Termination of Delegate – Good Faith Effort

Contractor will make a good faith effort to give written notice of termination of a delegation with an individual, group or organizational provider, within 15 days after issuance of termination notice, to each beneficiary who is receiving mental health services on a regular basis from the terminated delegated provider.

5.4 Status as Independent Contractors

Contractor will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of County or State. No relationship of servant, employee, partnership, joint venture, or association is created or intended to be created hereby. None of the provisions of this Agreement is intended to create, nor will be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. Neither party will have the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein. Contractor will be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Contractor's personnel rendering services under this Agreement will not have any of the rights or privileges of County or State employees. Contractor and its agents, employees, and subcontractors will not have any claim against the County or State for any employee privileges and benefits including but not limited to, vacation pay, sick leave, retirement benefits, social security, workers' compensation, unemployment benefits, disability benefits, etc. Notwithstanding any reference to a managed care plan, Health Plan, or system of care, Contractor will act as an entity separate and apart

from the County and State and will be considered an independent contractor for all purposes including liability and litigation.

5.5 Hold Harmless

- (a) 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:
 - (1) Injuries to or death of any person, including Contractor or its employees/officers/agents;
 - (2) damage to any property of any kind whatsoever and to whomsoever belonging;
 - (3) 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
 - (4) 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.
 - (5) 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.

5.6 Insurance

Insurance requirements for Professional Services are as stated in Appendix B, which is incorporated by this reference.

5.7 Non-Discrimination

- (a) Non-Discrimination in Services, Benefits and Facilities

- (1) Consistent with the requirements of applicable federal or state law, Contractor will not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, HIV status, sexual preference or mental or physical handicap.
- (2) Contractor will comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.
- (3) Contractor will include the nondiscrimination and compliance provisions of this Agreement in all subcontracts to perform work under this Agreement.
- (4) Contractor will serve clients as determined by County's policies, procedures, directives, guidelines, and Cultural Competency Plan to ensure that all eligible clients receive services from clinical staff that is culturally, ethnically, and linguistically competent. In addition, services will be delivered in a manner that is considerate of clients' and family members' cultures while preserving the client's dignity and respecting their right to choose. For Cultural Competency Plan, refer to:
Need website here
- (5) In order to serve bilingual clients, Contractor will recruit, employ and maintain bilingual staff at a level designated by the County to be commensurate with the programs provided by Contractor.
- (6) Notwithstanding other provisions of this section, Contractor may require a determination of medical necessity pursuant to Title 9, CCR, section 1820.205, Section 1830.205 or Section 1830.210, prior to providing covered services to a beneficiary.

(b) Appropriate Facilities

Contractor agrees that its facilities will have access for the disabled to the extent required by Section 504 of the

Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and any federal or state provision requiring such access.

(c) Non-Discrimination in Employment

(1) The County is an equal opportunity employer. Contractor will comply with all applicable laws including County's equal opportunity requirements. Such laws include, but are not limited to the following:

(i) Title VII of the Civil Rights Act of 1964 as amended;

(ii) Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (sections 503 and 504);

(iii) California Fair Employment and Housing Act (Government Code sections 12900, et seq.;

(iv) California Labor Code sections 1101 and 1102.

(2) Contractor will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation.

(3) Contractor will give written notice of its obligations under this clause as follows:

(i) Notices. Contractor will post in a conspicuous place such notices to potential applicants and to employees, setting forth their right to be treated in conformity with the non-discrimination provisions of this Agreement.

(ii) Position Advertisements. All solicitations or advertisements for employees placed by or on behalf of Contractor will state that Contractor is an Equal Opportunity Employer.

(4) 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.

(5) 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.

(6) Non-compliance

Failure to comply with any of the requirements set forth in Paragraph 5.7(c) (1) through Paragraph 5.7 (c) (3) above will be considered a material breach of this Agreement. Such

failure will be grounds for suspension of this Agreement in whole or in part. Nothing in this Agreement will be deemed a limitation on the right of County to take any other action with respect to Contractor as a means of enforcing the anti-discrimination provisions of this Agreement as the State, County, or Federal government may require.

5.8 Clean Air Act & Federal Water Pollution Control Act

Contractor will comply with all applicable standards, orders or regulations issued pursuant to the provisions of Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, and will include such provision in all subcontracts of amounts in excess of \$100,000. Violations will be reported to the Centers for Medicare and Medicaid Services.

5.9 Provisions of Bilingual Services

- (a) When the community potentially served by Contractor consists of non-English or limited-English speaking persons, Contractor will take all steps necessary to develop and maintain an appropriate capability for communicating in any necessary second language, including, but not limited to the employment of, or contracting for, in public contact positions of persons qualified in the necessary second languages in a number sufficient to ensure full and effective communication between the non-English and limited-English speaking applicants for, and Beneficiaries of, the Contractor's services and the Contractor's employees.

Contractor may comply with this paragraph by providing sufficient qualified translators to provide translation in any necessary second language for any patient, caller or applicant for service, within a reasonable and legally permissible time of need for translation. Contractor will maintain immediate translation capability in the emergency room when five percent of the emergency room patients or applicants for emergency room services are non-English or limited-English speaking persons.

Contractor will provide immediate translation to non-English or limited-English speaking patients whose condition is such that failure to immediately translate would risk serious impairment. Contractor will post notices in prominent places in the facility of the availability of translation in the necessary second languages.

(b) As used in this Paragraph:

- (1) "Non-English or limited-English speaking persons" refers to persons whose primary language is a language other than English;
- (2) "Necessary second language" refers to a language, other than English, which is the primary language of at least 5% of either the community potentially served by the contracting facility or the facility's patient population;
- (3) "Community potentially served by the contracting facility" refers to the geographic area from which the facility derives 80% of its patient population;
- (4) "Qualified translator" is a person fluent in English and in the necessary second language, familiar with medical terminology, and who can accurately speak, read, write, and readily interpret in the necessary second language.

5.10 Integration

County and Contractor declare that this Agreement, including Appendices, contain a total integration of all rights and obligations of all parties with respect to the subject matter of this Agreement. There are no extrinsic conditions or collateral agreements or undertakings of any kind. It is the express intention of both County and Contractor that any and all prior or contemporaneous agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement which are not expressly set forth herein are of no force, effect, or legal consequence.

5.11 Headings

The headings of articles and paragraphs contained in this Agreement are for reference purposes only and will not affect in any way its meaning or interpretation.

5.12 Dispute Resolution

- (a) All disputes arising in connection with the performance by any party under this Agreement will be subjected to the provisions of this section 5. 12. Time is of the essence in the resolution of disputes. The parties will act immediately to resolve informally such disputes.
- (b) If the parties, through their respective authorized designees, cannot

mutually resolve a dispute within 7 days after written notification by any party to the other parties of the existence of such dispute, then the following procedure will apply:

- (1) Each party will appoint one person to act as an impartial mediator in an attempt to resolve such dispute. Each of the mediators will have sufficient knowledge and experience to understand such dispute but will not be a person who performs services under this Agreement. The mediators will be known as the "Dispute Resolution Group".
 - (2) The Dispute Resolution Group will convene at a location convenient to all parties, not later than 12 days following notification of the existence of such a dispute and will meet for a maximum of 4 4-hour sessions during the subsequent 7 business days in an attempt to reach resolution of such dispute which is acceptable to the parties. At such sessions, the Dispute Resolution Group may allow the parties to present arguments and other information regarding such dispute. Legal Counsel will be permitted to present arguments.
 - (3) In the event that at such sessions, the Dispute Resolution Group fails to reach a resolution of such dispute that is acceptable to all parties, then each party may assert its other rights and remedies as provided under this Agreement or provided by law.
 - (4) The parties will bear their own costs of mediation.
- (c) Nothing in this section 5.12 is intended to delay either party's right to suspend, cancel or terminate the Agreement in accordance with applicable provisions herein.

5.13 Governing Authorities

- (a) This Agreement will be governed and construed in accordance with the laws of the State of California including but not limited to Part 2.5, Division 5 of the Welfare and Institutions Code and regulations adopted pursuant thereto, and all other applicable state laws and regulations according to their content on the Effective Date, including regulations for Medi-Cal Psychiatric Inpatient Hospital Services, Title 9, and California Code of Regulations, Chapter 10.

- (b) Contractor stipulates that this Agreement, in part, implements Title XIX of the Federal Social Security Act and, accordingly, covenants that it will conform to such requirements and regulations as the United States Department of Health and Human Services may issue from time to time, except for those provisions waived by the Secretary of Health and Human Services. Titles 42 and 45 (Part 74) of the Code of Federal Regulations and all other applicable federal laws and regulations according to their content on and after the Effective Date, except those provisions or applications of those provisions waived by the Secretary of the Department of Health and Human Services.
- (c) Any provision of this Agreement in conflict with the laws or regulations stipulated in (a) of this Paragraph is hereby amended to conform to the provisions of those laws and regulations. Such amendment of the Agreement will be effective on the effective date of the statute or regulation necessitating it and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties as provided in Paragraph 5.10.
- (d) Venue will be in San Mateo County, California.

5.14 Application for Termination in the Face of a Declaration or Finding of Partial Invalidity

In the event any provision of this Agreement is declared null and void by any court of law, either party may apply to that court for permission to immediately rescind the remainder of the Agreement. In ruling upon this request the court will consider the impact upon the affected Medi-Cal population as well as the relative degree of hardship which would be imposed upon either or both of the parties if the request is denied.

5.15 Informal Amendments Ineffective, Toleration of Deviation from Terms of Agreement Not to be Construed as Waiver

- (a) It is the express intention of both County and Contractor that the terms of this Agreement will comprise their entire agreement and are not subject to rescission, modification or waiver except as defined in a subsequent written instrument executed in the same manner and with the same authority. County and Contractor mutually covenant and request of any reviewing tribunal that any claim of rescission, modification, or waiver predicated upon any evidence other than a subsequent written instrument executed in the same manner and with the same authority as this writing be

regarded as void.

- (b) The informal toleration by either party of defective performance of any independent covenant of this Agreement will not be construed as a waiver of either the right to performance or the express conditions which have been created in this Agreement.

5.16 Beneficiary Eligibility

This Agreement is not intended to change the determination of Medi-Cal eligibility for Beneficiaries in any way. However, in the event the California State Legislature or Congress of the United States enacts a statute which redefines Medi-Cal eligibility so as to affect the provision of Psychiatric Inpatient Hospital Services under this Agreement, such new definition will apply to the terms of this Agreement.

5.17 Notices

Any notice required to be given pursuant to the terms and provisions of the Agreement will be in writing and will be sent by certified mail, return receipt requested, addressed as set forth below, will be deemed to have been received on the date shown on such return receipt:

County: San Mateo County Behavioral Health & Recovery Services
Attn: Susann Reed, Contract Manager
2000 Alameda de las Pulgas, Suite 280
San Mateo, CA 94403
sreed@smcgov.org

With copy to: San Mateo County Behavioral Health & Recovery Services
Attn: Scott Gruendl, Assistant Director
2000 Alameda de las Pulgas, Suite 280
San Mateo, CA 94403
sgruendl@smcgov.org

Contractor: Fremont Hospital
Attn: Crysta Krames, Director of Business Development
39500 Sundale Drive, Suite 200
Fremont, CA 94538
Crysta.krames@uhsinc.com
510-743-2032

With copy to: BHC Fremont Hospital, Inc.

Attn: General Counsel
102 Woodmont Blvd., Suite 800
Nashville, IN 37205

5.18 Fingerprint Compliance

Contractor certifies that its employees, trainees, and/or its subcontractors, assignees, volunteers, and any other persons who provide services under this agreement, who have direct contact with any client will be fingerprinted in order to determine whether they have a criminal history which would compromise the safety of individuals with whom the Contractor's employees, trainees and/or its subcontractors, assignees, or volunteers have contact.

5.19 Certification of Healthcare Service Providers

Contractor certifies that none of its employees or agents providing service under this Agreement ("Service Providers") have been convicted of a criminal offense related to health care, nor are any listed by any federal or state agency as debarred, excluded or otherwise ineligible for participation in Medicare, Medi-Cal, or any other federal or state funded health care program. Contractor certifies that it has performed an appropriate screening of Service Providers prior to making this certification, that it will screen all new Service Providers, and that it will monitor the status of existing Service Providers. Contractor certifies that it and Service Providers possess all required licenses that such licenses are in good standing and that in providing these contract services, it and its Service Providers are operating within any and all limitations or restrictions of these licenses. Contractor further certifies that all directors, managing employees, and owners of five percent interest, or more, in Contractor's business have not been convicted of any health care related offenses nor excluded from Medicare, Medi-Cal, or any other federal or state funded health care program.

Contractor agrees to notify the County immediately should Contractor or Service Provider be investigated, charged, or convicted of a health care related offense. During the pendency of any such proceedings, Contractor, or a Service Provider may, at the request of the County, be removed from any responsibility for, or involvement in, the provision of services under this Agreement. It is the Contractor's obligation to keep the County fully informed about the status of such proceedings and to consult with the County prior to taking any action which will directly impact the County. This Agreement may be terminated immediately by County upon the actual exclusion, debarment, loss of licensure, or

conviction of Contractor or of a Service Provider of a health care offense.

Contractor will indemnify, defend, and hold harmless County for any loss or damage resulting from the conviction, debarment, or exclusion of Contractor, or Service Providers, or subcontractors.

5.20 Health Insurance Portability and Accountability Act (HIPPA), Confidentiality Laws, and PHI Security

Contractor will provide services under this Agreement in accordance with all federal, state and local laws, rules, regulations, and codes effective at the inception of this Agreement and that become effective during the term of this Agreement and execute any amendments necessary to implement such laws, including but not limited to:

- (a) 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.
- (b) Contractor will develop and maintain a written 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.
- (c) 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.
- (d) 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.
- (e) All laws for the Medi-Cal and Medicaid programs indicated above, and any regulations promulgated thereunder, as applicable.
 - (f) The applicable provisions of Titles 9 and 22 of the California Code of Regulations;
 - (g) Health Insurance Portability and Accountability Act, 45 C.F.R parts 160, 162 and 164 ("HIPAA");
 - (h) Health Information Technology for Economic and Clinical Health Act (HITECH Act), Pub. L. 111-5, Div. A, Title XIII, § 130001 et seq., Div. B, Title IV, § 4001 et seq., Feb. 17, 2009, 123 Stat. 226, 467, 42 U.S.C.A. § 300ii, et seq., and 42 U.S.C. A, § 17901, et seq.;
 - (i) California Welfare and Institutions Code section 5328 et seq.;
 - (j) California Evidence code section 1010 et seq.;
 - (k) Mental Health Services Act (MHSA Section 5890 et seq.) and any regulations promulgated thereunder;
 - (l) Any State policies as identified in the State Department of Mental Health (SDMH) or Department of Health Care Services Letters and in the Cost Reporting/Data Collection Manual ("CDRC"), and any other applicable provision of law or regulation;
 - (m) Contractor will honor the enrollee's rights while complying with the above referenced statutes and regulations.

5.21 Prohibitions on Referrals

In addition to County's and Contractor's obligations to comply with applicable federal, state and local laws respecting the conduct of their respective business and profession, County and Contractor acknowledge that they are subject to certain federal and state laws governing referral of patients which are in effect or will become effective during the term of this Agreement. These laws include prohibitions on:

- (a) Payments for referral or to induce the referral of patients (Cal. Business and Professions Code section 650; Cal. Labor Code section 3215; and section 1128B of the Social Security Act); and
- (b) The referral of patients by a contractor or its employees, subcontractors or agents for certain designated health care services to an entity with which the contractor or its employees, subcontractors or agents (or the referring parties immediate family) has a financial relationship (Cal. Labor Code sections 139.3 and 139.31, applicable to referrals for workers' compensation services; Cal. Business and Professions Code sections 650.01 and 650.02 applicable to all other patient referrals within the State; and section 1877 of the Social Security Act, applicable to referrals of Medicare and Medi-Cal patients).

5.22 Entirety

This Agreement, including its exhibits, contains the sole and entire agreement between County and Contractor with respect to the subject matter hereof and will supersede all prior agreements between the parties as of the effective date hereof. The parties acknowledge and agree that they have not made any representations with respect to the subject matter of this Agreement, or any representations inducing its execution and delivery except such representations as are specifically set forth herein.

5.23 Severability

In the event any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal or unenforceable in any respect, it will not affect any other provision of this Agreement. This Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.24 Waiver

No delay or failure to require performance of any provision of this

Agreement will constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and will apply to the specific instance expressly stated.

5.25 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

5.26 County Ordinances, Resolutions, Policies, Procedures, Directives, and Guidelines

- (a) Contractor will provide services under this Agreement in accordance with the ordinances and resolutions of the County Board of Supervisors and the applicable policies, procedures, directives, and guidelines of County, MHD, and San Mateo County.
- (b) Contractor will be in compliance with any new or modified written policy, procedure or directive within thirty (30) days from the date on the notification or sooner if required by federal, state, or local law or regulations or County, MHD, or San Mateo County policy.
- (c) Contractors that receive training from BHRS in pandemic and other disasters (All Hazards) including, but not limited to: identifying high risk populations, monitoring psychosocial reactions to All Hazards, disseminating appropriate educational materials, providing safe intervention as needed and possible, and making appropriate referrals, will, at Director's discretion, be involved in planning and response activities related to All Hazards.
- (d) Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any food and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is provided, healthier food options must be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low-calorie foods; (2) minimally processed, low sodium foods without added sugar; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall: (1) offer seasonal and local produce; (2) serve

fruit instead of sugary, high calorie desserts; (3) attempt to accommodate any special dietary or cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snacks are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snacks consist solely of nuts and/or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans- fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 milligrams of sodium per serving.

If beverages are provided, beverages that meet the County's nutritional criteria are water with no caloric sweeteners; (2) unsweetened coffee or tea, except that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

- (e) If Contractor utilizes County facilities when performing under this Agreement, Contractor and/or Service Providers will read and abide by the requirements of the San Mateo County Compliance Program, Code of Conduct, and Compliance Program Manual. Contractor and/or Service Providers will, at the request of County, attend compliance workshops provided by San Mateo County. Contractors who do not utilize County facilities will implement a compliance program and will provide County with a copy of their compliance programs, if requested.

5.27 Locker Use at Fremont Hospital

BHRS staff, BHRS contracted providers, conservators or others shall not be charged for storing personal belongings on site when visiting the facility for care coordination, quality review, and other essential clinical care duties

Signature page to follow.

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

COUNTY OF SAN MATEO

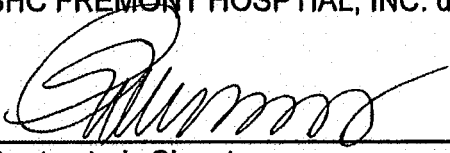
By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

BHC FREMONT HOSPITAL, INC. dba FREMONT HOSPITAL



Contractor's Signature

Date: 6/25/19

APPENDIX A

DEFINITIONS

Acute Psychiatric Inpatient Hospital Services.

"Acute Psychiatric Inpatient Hospital Services" means medically necessary inpatient hospital services covered by the Medi-Cal program and rendered to a Beneficiary for the care and the treatment of an acute episode of mental illness which do not qualify as Administrative Day(s) of service.

Administrative Day.

"Administrative Day" means a day determined by utilization management review (based on review of provided medical record documentation) to justify a level of care in either a subacute facility (including IMD, State Hospital, SNF, etc.) setting for which a bed is unavailable, or an authorized crisis residential program for which a bed is unavailable, but which does not justify a level of care in an acute psychiatric hospital. Patients who no longer require an acute hospital level of care, but who have been accepted by the County Behavioral Health and Recovery Services Director or designee for placement in an IMD, State Hospital, skilled nursing facility, or who are accepted to and awaiting placement in an authorized crisis residential program qualify for this category. Patients who no longer require an acute hospital level of care and who have been refused by the County for IMD placement, SNF placement, State Hospital placement, or crisis residential placement do not qualify for this category.

Medi-Cal Beneficiary, Un-sponsored Patient, Special Case Services Patient, Beneficiary.

"Medi-Cal Beneficiary" means a person certified as eligible for services under the Medi-Cal program according to § 51001 of Title 22 of the California Code of Regulations, as the same may be amended from time to time and for whom the County is responsible for determining Medi-Cal beneficiary eligibility pursuant to Title 22 California Code of Regulations § 50120, and whose Medi-Cal beneficiary identification number contains San Mateo County Code number "44" as the first two numbers, except that, such term does not include Medi-Cal beneficiary eligible under Part A of the Medicare program, 42 U.S.C. § 1395 et. seq., if the beneficiary has not exhausted his or her right to Medicare Part A services. The term "Beneficiary" does not include a Medi-Cal eligible person who is enrolled in a health maintenance organization, prepaid health plan or other managed care plan that is responsible for the provision of Medi-Cal psychiatric inpatient hospital services.

"Indigent Patient" means a person for whom there is no third-party payor which is or may become responsible for paying for all or part of the person's services, including, but not limited to, Medicare, Medi-Cal or private insurance.

"Beneficiary" means a person that is either a Medi-Cal Beneficiary, an Indigent Patient.

Indigent Patient/Unsponsored Patient

"Indigent Patient" means a person for whom there is no third-party payor which is or may become responsible for paying for all or part of the person's services, including, but not limited to, Medicare, Medi-Cal or private insurance.

Delegate.

"Delegate" means any natural person or legal entity to whom Contractor attempts, by contract or otherwise, to transfer the primary liability to perform any covenant assumed in this Contract.

Department

"Department" means the State Department of Mental Health for the State of California.

Fiscal Intermediary.

"Fiscal Intermediary" means that person or entity who has entered into a contract, as specified in Section 14104.3 of the California Welfare and Institutions Code, with the Department to perform fiscal intermediary services related to this Contract.

Point of Authorization.

"Point of Authorization" means Behavioral Health and Recovery Services Division of the Health Department, County of San Mateo.

Psychiatric Inpatient Hospital Services

"Psychiatric Inpatient Hospital Services" means Acute Psychiatric Inpatient Hospital Services and Administrative Day services covered by Medi-Cal program provided to a Beneficiary for the care and treatment of an episode of mental illness in the Facility. If Contractor is a free-standing acute psychiatric hospital larger than sixteen (16) beds, the term includes services rendered to persons age twenty-one (21) or older and younger than age sixty-five (65). If Contractor is an acute care hospital, the term excludes services rendered in a medical/surgical bed and any

service rendered in a bed other than a bed in an approved psychiatric unit as defined in 22 California Code of Regulation § 70575.

Regulations.

"Regulations" means the Medi-Cal Psychiatric Inpatient Hospital Services Consolidation Regulations contained in the California Code of Regulations pertaining to the rendition of mental health care which have been promulgated under California.

Welfare and Institutions Code Section 5775 et. seq. and 14680, et. seq.

Meaning of Words.

The word and terms used in this Agreement are intended to have their usual meanings, unless a particular or more limited meaning is associated with their usage in Sections 5775, et. seq., and 14680, et seq., of the California Welfare and Institutions Code or the Regulations, unless specifically defined in this Article or otherwise in this Agreement.

APPENDIX B

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS

(e.g. Medical, Legal, Financial services, etc.)

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of San Mateo or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence \$1,000,000
 - b. General aggregate \$2,000,000
 - c. Personal Injury \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Personal Injury liability
 - c. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

"County of San Mateo, and members of the Board of Supervisors of the County of San Mateo, and the officers, agents, and employees of the County of San Mateo, individually and collectively, as additional insureds."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to owned, non-owned and hired vehicles.

Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement).

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than FIFTY THOUSAND DOLLARS (\$50,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant (s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

End of Appendix B

1.5 Service Location

Psychiatric Inpatient Hospital Services rendered pursuant to this Agreement will be rendered at the Facility, unless there has been a delegation approved by County pursuant to Section 4.4.

1.6 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.

1.7 Quality of Care

As express conditions precedent to County payment obligation under the terms of this Agreement, Contractor will:

- (a) Assure that any and all Beneficiaries receive culturally competent services and age- appropriate care as required by the Regulations and consistent with County's Quality Management Plan.
- (b) Take such action as required by Contractor's Medical Staff Bylaws against medical staff members who violate such Bylaws, as the same may be from time to time amended.
- (c) Provide services in the same manner to Beneficiaries as it provides to all patients to whom it renders Psychiatric Inpatient Hospital Services or similar hospital services.
- (d) Not discriminate against Beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or provision of special or separate meals.
- (e) Individual physicians and other mental health professionals will render professional services to eligible voluntary or involuntary clients on the same basis as they care for other clients in Contractor's facility and will not discriminate against these clients in any manner, including admission practices, placement in special wings or rooms, or provision of special or separate meals.
- (f) Attending psychiatrists and psychologists shall be members of the

medical staff of Contractor, be subject to the rules and regulations of said staff and shall also be active contractors with the County. Duration and limitation of services will be under the control of the attending psychiatrist or psychologist but will at all times meet broadly accepted community standards of quality of care and be subject to Contractor utilization review decisions.

1.8 Assumption of Risk by Contractor

Whether rendered directly by Contractor or through delegation by Contractor as permitted under this Agreement, Contractor will bear total risk for the cost of all Psychiatric Inpatient Hospital Services rendered to each Beneficiary covered by this Agreement. As used in this Paragraph, "risk" means that Contractor agrees to accept as payment in full for any and all Psychiatric Inpatient Hospital Services payments made by the or County pursuant to Article 2 of this Agreement, irrespective of whether the cost of such services and related administrative expenses will have exceeded the payment obligation of County under the conditions set forth in this Agreement. The term "risk" also includes, but is not limited to, the cost for all Psychiatric Inpatient Hospital Services for illness or injury resulting, in whole or in part, from a catastrophe or disaster which occurs subsequent to the Effective Date (as defined in Section 4.1 below), including but not limited to acts of God, war or the public enemy.

1.9 Patient's Rights

- (a) Contractor or any Delegate providing services pursuant to the terms of this Agreement will adopt and post in a conspicuous place a written policy on patient's rights in accordance with section 70707 of Title 22 of the California Code of Regulations and section 5325 et seq. of the California Welfare and Institutions Code. All complaints by Beneficiaries with regard to services provided hereunder may be investigated by County's Patient Rights Advocate, County, California Department of Health Care Services or by the Joint Commission on Accreditation of Health Care Organization, or such other agency, as required or permitted by law or regulations.
- (b) Contractor will maintain throughout the term of this Agreement a process for the resolution of Beneficiary complaints and grievances. Contractor agrees to cooperate with County with respect to the complaint resolution and grievance process maintained by County pursuant to the Regulations.
- (c) Contractor agrees to provide Medi-Cal clients who are new to the Mental Health System with a brochure (an original of which shall

be provided by County) when a client first receives a specialty mental health service from the Contractor. Such brochure shall contain a description of County services available; a description of the process for obtaining County services, including the County's state-wide toll-free telephone number; a list of the County's providers; a description of the County's beneficiary problem resolution process, including the complaint resolution and grievance processes; and a description of the beneficiary's right to request a fair hearing at any time before, during or within 90 days after the completion of the beneficiary problem resolution process.

1.10 Inadequate Performance

If County of Contractor finds that performance is inadequate, at the County's discretion, a meeting may be called to discuss the causes for the performance problem, to review documentation, billing and/or other reports, and to take appropriate corrective action, as needed, to resolve any identified discrepancies. This Agreement may be renegotiated, allowed to continue to end of term, or terminated pursuant to Paragraph 4.2 of this Agreement. Any unspent monies due to performance failure may reduce the following year's agreement, if any.

1.11 Consultation Requirements Regarding Adults on the Adolescent Unit

Contractor will notify the County Behavioral Health Director, or his/her designee.

1.12 Outcome Objectives

- (a) For completed episodes, there will be no more than ten percent (10%) recidivism of clients within thirty (30) days following discharge.
- (b) For completed episodes, Contractor will maintain or reduce the 2017-2018 combined average length of stay. Contractor will make best efforts to meet such goals, but failure to meet any or all of these goals does not constitute a breach, material, or otherwise of the Agreement. County's payment obligation is in no way contingent on meeting any of the stated goals.

1.13 Discharge Procedures

- (a) Contractor shall communicate to County the scheduled discharge date and time in advance of the discharge to the County Adult Resource Management (ARM) Nurse for adult patients, and Youth

Case Management for youth and adolescent patients, who will coordinate discharge planning and activities on behalf of the County. It is preferred that the ARM Nurse and Youth Case Management become involved in the planning for a discharge at least three days before the discharge.

- (b) Discharge coordination can be initiated directly with the ARM Nurse, Youth Case Management, or for adults through the Access Call Center at 800-686-0101. Calls into the Call Center for discharges are automatically prioritized to the front of the queue and answered by the next available clinician.
- (c) Coordination of medications is critical to discharge planning and for patients known to the County the first follow up appointment post discharge must be a face to face appointment for Medication Support. For new patients, this first appointment is an assessment and/or PIN appointment. In either scenario, the amount of prescription medications provided upon discharge must be sufficient to treat the patient up to and through the first appointment. Therefore, the follow up appointment must be determined in order to prescribe an adequate quantity of medication for the patient prior to discharge.
- (d) The hospital discharge nurse shall contact the Access Call Center to request an appointment as the first follow up appointment for the discharged patient. This appointment must be scheduled, and the patient informed prior to discharge.
- (e) If the patient is to be discharged with medications, when contacting the Access Call Center or the Arm Nurse, or Youth Case Management, request identification and coordination of the treating MD for the County to facilitate a Doctor to Doctor consultation prior to or immediately following discharge.
- (f) The Access Call Center, the ARM Nurse, or Youth Case Management will identify information needed for the specific patient to be discharged. This includes at a minimum a discharge summary consisting of diagnosis and prognosis, medications and dosage, practitioner name and contact information, natural supports name and contact information, and summary or attached discharge plan inclusive of step down detail.
- (g) Patients known to the County shall be discharged as a warm hand off to the County by the presence of a County representative present at the time of discharge. If a representative cannot be

present, the discharge must be coordinated to assure adequate transportation and placement to the next level of care. Under no circumstances can a patient be discharged with no County representative present unless previously coordinated with the County.

ARTICLE 2: PAYMENT PROVISIONS

2.1 Rate Structure; Contingent Liability of County

(a) Subject to the conditions precedent set forth in this Agreement and provided that claims are submitted in accordance with the provisions of Paragraph 2.6 of this Agreement, Contractor will be paid at the all-inclusive rate for each Day of Service (as defined in Paragraph 2.3 (c) below) that Contractor renders Acute Psychiatric Inpatient Hospital Services to a Medi-Cal Beneficiary or to an Indigent Patient (for whom the County has assumed responsibility) at the rate of:

i. **July 1, 2019 through June 30, 2020 “host county” per diem Short-Doyle rates:**

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

\$1,480 per day for children & adolescents (\$1,365 Facility Fee, \$115 Professional Fee)

ii. **July 1, 2019 through June 30, 2020 MediCal inpatient psychiatric per diem rates:**

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

\$1,480 per day for children & adolescents (\$1,365 Facility Fee, \$115 Professional Fee)

iii. **July 1, 2019 through June 30, 2020 Indigent inpatient psychiatric per diem rates:**

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

iv. **July 1, 2020 through June 30, 2021 “host county” per**

diem Short-Doyle rates:

\$1,433 per day for adults (\$1,318 Facility Fee, \$115 Professional Fee)

\$1,480 per day for children & adolescents (\$1,365 Facility Fee, \$115 Professional Fee)

v. July 1, 2020 through June 30, 2021 MediCal inpatient psychiatric per diem rates:

\$1,318 per day for adults ages 18-21 and 65+ (hospital only)

\$1,365 per day for children and adolescents (hospital only)

vi. July 1, 2020 through June 30, 2021 Indigent inpatient psychiatric per diem rates:

\$1,318 per day for adults ages 18-21 and 65+ (hospital only)

(b) Maximum Obligation

In no event shall County's total fiscal obligation under this Agreement exceed TWO MILLION TWENTY-FOUR THOUSAND SEVEN HUNDRED THIRTY-SIX DOLLARS (\$2,024,736). 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.

(c) Subject to the conditions precedent set forth in this Agreement and provided that claims are submitted in accordance with Paragraph 2.6 of this Agreement and the requirements of Section 2.7 of this Agreement are met, Contractor will be paid at the all-inclusive rate for each Administrative Day which is specified by the Regulations and there will be no additional payment for ancillary services.

(f) Subject to the conditions precedent set forth in this Agreement, Contractor will be paid at the Special Admission Services Rate

of:

i. July 1, 2019 through June 30, 2020

Adolescent (ages 6-17)

\$1,485 per day (\$1,365 Facility Fee, \$120 Professional Fee)

ii. July 1, 2020 through June 30, 2021

Adolescent (ages 6-17)

\$1,485 per day (\$1,365 Facility Fee, \$120 Professional Fee)

For those individuals designated by the County to fit the criteria for Special Admission Services Rate at the time of admission as described in Appendix C, this Special Admission Rate is inclusive of all Psychiatric Inpatient Hospital Services including Routine Services, all Hospital-Based Ancillary Services (as those terms are defined in the Regulations), and physician or psychologist services rendered to patients covered under this Agreement. The Special Admission Rate does not include transportation services required in providing Psychiatric Inpatient Hospital Services. For an individual to be designated for potential payment under this Special Admission Services Rate, he or she must be approved at the time of admission by the County's designee as described in the protocols in Appendix C. Contractor must submit a Treatment Authorization Request (TAR) and comply with all applicable Medi-Cal regulations for those Special Admission Services Rate designated individuals that have Medi-Cal. If days are denied through the regular TAR process, then Contractor may submit a claim for the day(s) denied as described in Appendix C.

2.2 Rate Inclusive of All Psychiatric Inpatient Hospital Services; Rate Does Not Include Physician, Psychologist, or Transportation Services for Medi-Cal Beneficiaries, or Indigent Patients

The rates set forth in Paragraph 2.1 of this Agreement for Medi-Cal Beneficiaries or Indigent Patients are inclusive of all Psychiatric Inpatient Hospital Services including Routine Services and all Hospital-Based Ancillary Services (as those terms are defined in the Regulations), but do not include physician or psychologist services rendered to beneficiaries covered under this Agreement, or transportation services (CCR Title 9, Chapter 11, section 1810.355 (a) (1)(B)) required in providing Psychiatric Inpatient Hospital Services, and such physician, psychologist and transportation services

will not be paid for or reimbursed by County under this Agreement.

2.3 Billing Procedures as Express Conditions Precedent to County's Payment Obligation

- (a) As an express condition precedent to County's payment obligation under Paragraph 2.1 of this Agreement, Contractor will use its best effort to determine whether Psychiatric Inpatient Hospital Services rendered hereunder are covered, in whole or in part, under any other state or federal medical care program or under any other contractual or legal entitlement, including, but not limited to, a private group indemnification or insurance program or workers' compensation (herein, Third Party Payors).
- (b) As a further express condition precedent to County's payment obligation under Paragraph 2.1 of this Agreement, Contractor will bill its Customary Charges (as defined in the Regulations) and submit claims to the Fiscal Intermediary for all Psychiatric Inpatient Hospital Services hereunder rendered in accordance with the applicable billing requirements contained in Section 5778 of the California Welfare and Institutions Code and the Regulations, using the number assigned by the Medi-Cal program to Contractor and using the Allowable Psychiatric Accommodation Codes set forth in the Regulations.
- (c) A Day of Service will be billed for each Beneficiary who meets admission and/or continued stay criteria, documentation requirements, treatment and discharge planning requirements and occupies a psychiatric inpatient hospital bed at 12:00 midnight in the Facility and for which the appropriate authorization has been granted, excluding the day of discharge.
- (d) Contractor will bill any Third-Party Payor financially responsible for a Beneficiary's health care services. County accepts no financial responsibility for services provided to Beneficiaries where there is a responsible Third-Party Payor, and to the extent that County inadvertently makes payment to Contractor for such services rendered, County will be entitled to recoup such reimbursement.
- (e) In regard to Medi-Cal patients for whom Third Party Payors have financial responsibility, the County will approve reimbursement to Contractor at its per diem rates as set forth in Paragraph 2.1 less the net of liability of Third Party Payors and patient share of costs. County will not be responsible to provide or arrange and, pay for acute inpatient mental health services provided to a beneficiary

eligible for Medicare, prior to the exhaustion of beneficiary's Medicare mental health benefits.

It is understood that any payments received from County or third-party insurers for services rendered under this Agreement shall be considered as payment in full and Contractor cannot look to the client for reimbursement for the units of service provided under this Agreement, except as provided for under Medi-Cal Share of Cost regulations.

- (f) Non-Payment to Entity/Provider Pursuant to Title 9, CCR, Section 1810.365, Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor will not submit a claim to demand or otherwise collect reimbursement from the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this Agreement except to collect other health insurance coverage, share of cost and co-payments. The Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor will not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State and/or County does not pay the Contractor or an affiliate, vendor, contractor, or sub-subcontractor, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

2.4 County May Withhold Payment

Contractor shall provide all pertinent documentation required for federal Medi-Cal reimbursement (including initial and quarterly notices, assessment and service plans, and progress notes). The County may withhold payment for any and all services for which the required documentation is not provided, or if the documentation provided does not meet professional standards as determined by the Quality Improvement Manager of the San Mateo County Behavioral Health and Recovery Services Division of the Health System.

2.5 Recovery of Overpayment to Contractor, Liability for Interest

- (a) When an audit or review performed by County, by the California Department of Mental Health ("Department"), the California Department of Health Care Services ("DHCS"), the California

Controller's Office, or any other authorized agency discloses that Contractor has been overpaid under this Agreement, or that the total payments exceed the total liability under this Agreement, Contractor covenants that any such overpayment or excess payments over liability may be recouped by the County withholding the amount due from future payments hereunder, by seeking recovery by payment from Contractor, or a combination of these two methods.

- (b) Overpayments determined as a result of audits of periods prior to the effective date of this Agreement may be recouped by the County withholding the amount due from what would otherwise be the County's liability under this Agreement, by seeking recovery by payment from Contractor, or a combination of those two methods.
- (c) When recoupment or recovery is sought under 2.4(a), Contractor may appeal according to applicable procedural requirements of the Regulations and the regulations promulgated under Section 14680, et of California Welfare and Institutions Code, except that the recovery or recoupment will commence sixty (60) days after issuance of account status or demand resulting from an audit or review and will not be deferred by the filing of an appeal in accordance with the applicable regulations.
- (d) Contractor will be liable to County for the amount of any federal audit exceptions or disallowances or any sanctions or withholding of funds of the Department or by DHS as provided in Sections 5778 Subdivision (h), and 5779 Subdivision (e), of the Welfare and Institutions Code and the Regulations, to the extent that such exceptions, disallowances, sanctions or withholding of funds relate to services rendered under this Agreement.

2.6 Customary Charges Limitation

Notwithstanding any other provision in this Agreement, County's total liability to Contractor will not exceed Contractor's total Customary Charges for Psychiatric Inpatient Hospital Services for each year in which this Agreement is in effect. County may recoup any excess of total payments above such total customary charges for Psychiatric Inpatient Hospital Services under Paragraph 2.4. As used in this Paragraph, Customary Charges will have the meaning ascribed to that term in the Regulations.

2.7 Treatment Authorization and Claims Submission

As an express condition precedent to County's payment obligations hereunder, Contractor will obtain approval of a Treatment Authorization Request (TAR) for each Day of Service rendered to a Beneficiary. The treatment authorization process will take place either prior to admission or after discharge, as set forth below:

- (a) **Preauthorization for Planned Admission.** Contractor will obtain preauthorization up to seven (7) days in advance for admission of a Beneficiary for Acute Psychiatric Inpatient Hospital Services by submitting to County's Point of Authorization a TAR and such related documentation as may be specified by County in accordance with the applicable Regulations. When deemed necessary by County, County review of a TAR may include a psychiatric evaluation examination of the Beneficiary conducted at the time and place specified by County. If required, County will notify the attending physician and Beneficiary of the examination. If the medical necessity criteria set forth in the Regulations are met, County will approve the TAR and give preauthorization for payment for a specified number of Days of Service, not to exceed one (1) calendar month. County will notify Contractor of its approval or disapproval of a TAR in writing within fourteen (14) calendar days of County's actual receipt of such TAR. Approval is effective, if granted, up to seven (7) calendar days in advance of the provision of services. All adverse decisions of County will be reviewed and approved by a County authorized physician. Contractor may appeal an adverse decision through the provider appeal process set forth in the Regulations. If the TAR is denied prior to hospitalization, County will notify the Beneficiary within ten (10) calendar days.
- (b) **Authorization for Payment for Emergency Admission.** Payment authorization for emergency admissions will be exempt from preauthorization set forth in Paragraph 2.7(a) above but will be subject to the provisions set forth in this Paragraph 2.7(c). Contractor will notify the County's Point of Notification and Point of Authorization within twenty-four (24) hours or the next business day of the time of the admission of the Beneficiary to the Facility. A TAR for emergency admission and such related documentation as may be specified by the County will be submitted by the Contractor to the Point of Authorization after discharge of the Beneficiary, but no later than fourteen (14) calendar days following discharge. County will authorize payment for the emergency services received pursuant to the emergency admission if the clinical record documents that:

- (c) Authorization for Emergency Admission. Contractor will notify the County's Adult Resource Management Team (650-372-8573) within 24 hours or the next business day of the time of the admission of the Beneficiary to the Facility. A TAR for emergency admission and such related documentation as may be specified by the County will be submitted by the Contractor to the County's Quality Management Office after discharge of the Beneficiary, but no later than fourteen (14) calendar days following discharge. Contact information for BHRS Quality Management is as follows:

BHRS Quality Management
Attn: Holly Severson, RN MSN
1950 Alameda de las Pulgas, Suite 157
San Mateo, CA 94403
Phone: 650-573-2996
Fax: 650-525-1762
Email: hseverson@smcgov.org

County will authorize payment for the emergency services received pursuant to the emergency admission if the clinical record documents that:

- (1) The medical necessity criteria set forth in the Regulations are met.
 - (2) The criteria for an emergency psychiatric condition set forth in the Regulations were met at the time of admission.
 - (3) The County was notified within 24 hours or the next business day from the presentation for emergency services. If notice exceeds 10 calendar days, County may deny payment to Contractor.
 - (4) The TAR and related documentation were received no later than 14 calendar days following discharge.
- (d) Admission of County beneficiaries that were not referred through SMMC PES or diverted County Beneficiaries must be reported to the County's Point of Notification at the time of admission or diversion.

(e) Transitional Services

Transitional Services means services lasting less than twenty-four (24) hours to a client for a condition, which require more timely response than a regularly scheduled visit. Service activities may include, but are not limited to, assessment.

County is responsible for authorization of payment for transitional services provided within Contractor's emergency room solely under the conditions described in this Agreement and the Transitional Services Protocol, described in this section. Payment for transitional services will not include ancillary services. Contractor shall communicate with San Mateo County Medical Center (SMMC) Psychiatric Emergency Services (PES) and submit notifications and other documentation as described.

Transitional Services Protocol

- (1) All services claimed shall be provided in Contractor's Emergency Room.
- (2) For Beneficiaries admitted into a psychiatric bed at Mills-Peninsula Hospital, no transitional services may be claimed
- (3) For Beneficiaries assessed at Contractor's Emergency Room and discharged for whatever reason without admission into an inpatient bed, no transitional services may be claimed.
- (4) Medical Necessity for Inpatient Hospitalization shall be assessed by Contractor's staff. When a client meets medical necessity criteria but is capable of transport (not an emergency admission):
 - San Mateo County PES shall be informed by a notification form within three (3) hours of Beneficiary admission to Contractor's Emergency Service; PES determines where admission should occur.
 - If at the Contractor's Facility (and Contractor agrees), client is admitted, and no transitional services is claimed.
 - If at SMMC (or other hospital), Contractor's Emergency Services will be informed that client will

- be transported.
- (5) Contractor's Emergency Services documents time of agreement to transport by PES on notification form.
 - (6) Contractor's Emergency Services notes time of ambulance arrival on notification form and documents it in the medical chart.
 - (7) In the situation where PES wishes to assess a client but requests a delayed transport, the same notification form verification process will occur.
 - (8) For clients to be transferred, claims will be paid for the elapsed time, from Contractor's call to PES, which results in an ambulance dispatch, to time of ambulance arrival at Contractor's Emergency Services, rounded to the nearest hour, except that claim for less than one (1) hour may round up to one (1) hour.
 - (9) Any claim for transitional services must be accompanied by a notification form indicating elapsed time
 - (10) In the case of disagreements with allowed claims, Mental Health Plan (MHP) Quality Improvement staff will review notification form and chart notes in an effort to reconcile the discrepancy. Contractor may appeal the findings of this review to the BHRS Director. Since these services are not claimed to Medi-Cal, no state appeal process may be applied.
- (f) Authorization for Payment for Continued Stay Services. To the extent permitted by federal and state law, TAR for Continued Stay services will be submitted only after discharge of the Beneficiary, but no later than fourteen (14) calendar days after discharge of the Beneficiary from the Facility; except that, notwithstanding the foregoing, Contractor will submit a TAR within fourteen (14) days of the completion of ninety-nine (99) calendar days of continuous services to a Beneficiary. Payment authorization will be obtained through submission of a TAR and such related documentation as may be specified by the County to County's Quality Management Office (650-573-2996). If the medical necessity criteria set forth in the Regulations are met, the TAR will be approved. County will notify Contractor of its decision no later than fourteen (14) calendar days after the County's actual receipt of the TAR. County will provide a copy of the authorized or

denied TAR to Contractor. All adverse decisions will be reviewed and approved by a County authorized physician. Contractor may appeal an adverse decision through the appeal process set forth in the Regulations.

- (g) For Medi-Cal Beneficiary within the age range of 21-64 (IMD Exclusion), the UB04 Form, instead of TAR, will be submitted. The medical necessity criteria, timeline, and submission procedure are the same as described in Paragraph 2.7(b).
- (h) Timeliness. A TAR may be denied by County if it is not submitted in accordance with the timing requirements contained in this Paragraph 2.7, unless Contractor was prevented from submitting a timely TAR due to the circumstances specified in the Regulations.
- (i) Claims Submission. Claims for payment for services rendered pursuant to this Agreement will be submitted by the Contractor to the Fiscal Intermediary in accordance with the requirements set forth in Sections 51008 and 51008.5 of Title 22 of the California Code of Regulations. If the TAR is approved by County as provided in this Paragraph, County will submit a copy of such approval to the Fiscal Intermediary. The Fiscal Intermediary will make the payments required hereunder to Contractor on behalf of County.

2.8 Adverse Decisions

All adverse decisions of County will be reviewed and approved by a County authorized physician. Contractor may appeal an adverse decision through the provider appeal process set forth in the Regulations.

2.9 Professional Fee Claims

- (a) Contractor shall provide notice to any physician credentialed and/or privileged and/or contracted to provide services at the Facility that Contractor will require provider to bill pro fees independently, the following instructions: Professionals claiming fees directly to the County must account for the duration of a claimed service in minutes and maintain supporting documentation. In Section 240 (Procedure/CPT code) of the HCFA 1500 form the duration of the service in minutes must be entered in the modifier column. The minutes of service must match the minutes of service in the progress note maintained by the professional.

- (b) Contractor shall provide notice to these same credentialed professionals that all providers of service that bill the County shall provide initially with their claim and then upon any change thereafter, the following information to the extent not included or completed on the HCFA 1500:
 - 1) Provider Name and NPI; 2) Provider office address and contact info; Indicate if service billed is office or satellite; 3) Licensure Number, Type, and name of Certification Board (or board certified yes or no); 4) Name of University graduated from; 5) Social Security Number; 6) Date of Birth; 7) DEA number if applicable; 8) Average number of hours available to Medi-Cal patients per week; 9) Age groups served; 10) Specialized skills; 11) Language Capacity; 12) Proficiency Level of Language (Fluent, Good, Fair, Poor); 13) Cultural Competency Trained (yes or no); and 14) Total hours of Competency Training in the last year.
- (c) In consideration of this Section 2.9, should Contractor fail to notify any billing professional of the requirements set forth in paragraphs 2.9(a) and 2.9(b) resulting in claims received by the County without the accompanying information required in this section, said claims will be denied and the submitting professional shall be redirected to the Contractor for settlement of any denied claims. County will accept resubmission of claims denied under this section that are accompanied with the information required by this section.

2.10 Authorization for Administrative Days

Payment for Administrative Days hereunder is expressly conditioned upon Contractor's compliance with the following provisions in addition to the provisions of Paragraph 2.6 above and the definition of "Administrative Day" included in Appendix A.

ADULTS:

- (a) For patients requiring care in an Institution for Mental Diseases (IMD) or at the State Hospital, approval must be granted from the County's Mental Health Director or her designee. This approval must then be reflected in the medical record documentation. The medical record must reflect that the patient was admitted to the first available IMD or State Hospital bed.
- (b) For patients requiring care in the crisis residential system, approval must be granted by BHRS or any other program designated by County, as appropriate. The medical record documentation must reflect that approval has been granted. Further, there must be a daily entry (seven days per week) indicating the bed availability at

the crisis residential program. The medical record must reflect that the patient was admitted to the first available crisis residential bed.

- (c) For patients who are to be placed in a skilled nursing facility, the medical record must reflect that at least five appropriate facilities within a 60-mile geographic radius per week are contacted for admission request. The medical record must reflect that the patient was admitted to the first available appropriate bed.

2.11 Contractor Appeal Process

Contractor may file an appeal concerning the processing or payment of its claims hereunder for Psychiatric Inpatient Hospital Services directly to the Fiscal Intermediary in accordance with the procedures set forth in the Regulations.

2.12 Anticipated Revenues

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 Chief of the Health or designee.

ARTICLE 3: RECORDS AND AUDIT PROVISIONS

3.1 Medical Records Documentation for Adults

- (a) For patients requiring care in an Institution for Mental Diseases (IMD) or at the State Hospital, approval must be granted from the County's Behavioral Health and Recovery Services Director or his/her designee. This approval must then be reflected in the medical record documentation. The medical record must reflect that the patient was admitted to the first available IMD or State Hospital bed.
- (b) For patients requiring care in the crisis residential system, approval must be granted by Momentum for Mental Health or any other program designated by County, as appropriate. The medical record documentation must reflect that approval has been granted. Further, there must be a daily entry (seven (7) days per week) indicating the bed availability at the crisis residential program. The medical record must reflect that the patient was admitted to the first available crisis residential bed.

- (c) For patients who are to be placed in a skilled nursing facility, the medical record must reflect that at least five appropriate facilities within a 60-mile geographic radius per week are contacted for admission request. The medical record must reflect that the patient was admitted to the first available appropriate bed.

3.2 On-site Reviews

- (a) County, the California Department of Mental Health and/or the California Department of Health Care Services will conduct periodic audits or reviews, including on-site audits or reviews, of performance under this Agreement. These audits or reviews may evaluate the following:
 - (1) Level and quality of care, and the necessity and appropriateness of the services provided.
 - (2) Internal procedures for assuring efficiency, economy and quality of care.
 - (3) Compliance with County Client Grievance Procedures.
 - (4) Financial records when determined necessary to protect public funds.
- (b) Contractor will make adequate office space available for the review team or auditors to meet and confer. Such space must be capable of being locked and secured to protect the work of the review team or auditors during the period of their investigation.
- (c) On-site reviews and audits will occur during normal working hours with at least 72-hour notice, except that unannounced on-site reviews and requests for information may be made in those exceptional situations where arrangement of an appointment beforehand is clearly not possible or clearly inappropriate due to the nature of the intended visit.

43.3 Records to be Kept; Audit or Review: Availability, Period of Retention Contractor covenants and agrees that:

- (a) It will maintain books, records, documents, and other evidence, accounting procedures, and practices sufficient to reflect properly all direct and indirect costs of whatever nature incurred in the performance of this Agreement.

- (b) The above information will be maintained in accordance with Medicare principles of reimbursement and generally accepted accounting principles and will be consistent with the requirements of the Office of Statewide Health Planning and Development.
- (c) Contractor will also maintain medical records required by Sections 70747 through 70751 of Title 22 of the California Code of Regulations, and other records related to a Beneficiary to whom the service was rendered, the date of the service, the medical necessity of the service and the quality of the care provided. All such records will be maintained in accordance with Section 51476 of Title 22 of the California Code of Regulations. Notwithstanding the foregoing, Contractor will maintain Beneficiary medical and/or clinical records for a period of 10 years, except that the records of persons who are under the age of 18 at the time of treatment will be retained until either: (a) one year beyond the person's 18th birthday or (b) for a period of 10 years from the date of discharge, whichever period is later.
- (d) The Facility and the information specified in this Paragraph will be subject at all reasonable times to inspection, audits and reproduction by any duly authorized agents of the County, State and Federal governments. Contractor agrees to allow the County, State, and federal agencies including the Director, and/or any designated auditor of County, the State of California, including but not limited to officials from the State Department of Mental Health or the State Department of Health Services, any designated official of the Department of Health and Human Services, the Comptroller General of the United States, or the fiscal intermediary, the right to inspect or otherwise evaluate the cost, quality, appropriateness, and timeliness of services performed and to audit and inspect any books and records of Contractor which pertain to services performed and/or determinations of the amounts payable under this Agreement. Copies of records will be made available upon County's requests for copies of Contractor's records.
- (e) Contractor will preserve and make available its records relating to payments made under this Agreement for a period of ten years from the close of Contractor's fiscal year, or for such longer period, required by subparagraphs (1) and (2) below.
 - (1) If this Agreement is terminated, the records relating to the performance of Contractor's obligations hereunder will be maintained by Contractor and made available for a period of 4 years from the date of the last payment made under the

Agreement; or

- (2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 4-year period, the related records will be retained until expiration of the 4 year period following the completion and resolution of all issues arising there from; whichever is later.
- (f) Contractor will provide to each Beneficiary for completion a patient satisfaction survey form or perform a phone survey. Utilization of a research firm to perform this function is acceptable. The results of such surveys for each calendar year will be compiled and provided to County within 60 days of any calendar year-end.
- (g) Contractor will complete such forms as County reasonably may require regarding Performance Outcome Measures for each Beneficiary.

3.4 Liability of Delegates for Examination of Accounts, Audit and Records

County will have such rights as are accorded to it as an intended third-party beneficiary of a covenant made in a contract of delegation, pursuant to Paragraph 4.4 below.

3.5 Confidentiality of Information

- (a) Contractor will maintain adequate medical, clinical, and/or rehabilitative records on each patient, as indicated by the program type. The records will include diagnostic studies and a record of services provided to the patient and will be in sufficient detail to facilitate an evaluation of the services provided. The records will contain all data necessary to prepare reports to the State Department of Mental Health, and will include, but not be limited to, coordinated services plans, records of patient interviews, and progress notes.
- (b) Patient records will be subject to the confidentiality and disclosure provisions of applicable local, State and Federal laws, statutes and regulations including Welfare and Institutions Code Section 5328, Evidence Code Section 1010 et seq., Title 45, Code of Federal Regulations Section 205.50; and 14100.2 of the Welfare and Institutions Code; and regulations promulgated thereunder. For the purpose of this Agreement, all information, records, and data elements pertaining to Beneficiaries will be protected by Contractor from unauthorized disclosure.

- (c) With respect to any identifiable information concerning Beneficiaries under this Agreement that is obtained by Contractor or its delegates, Contractor:
- (1) Will not use any such information for any purpose other than carrying out the express terms of this Agreement;
 - (2) Will maintain standard consent forms for patients to use when requesting disclosure of records;
 - (3) Will maintain written procedures on the retention and disclosure of patient records;
 - (4) Will not disclose, except as otherwise specifically permitted by law, any such information to any party other than County or entities to whom the information may be released under Title 45, Code of Federal Regulations Section 205.50; Sections 5328 and 14100.2 of the California Welfare and Institutions Code; and regulations promulgated thereunder; and
 - (5) Will retain all such information for purposes of audit and inspection.

ARTICLE 4: TERMINATION, DELEGATION, OR ASSIGNMENT

4.1 Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2019 through June 30, 2021.

4.2 Termination

(a) Termination Without Cause

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 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.

(b) 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.

(c) Termination of Agreement

Upon termination of this Agreement, Contractor will provide BHRS Contracts Administration with a current list of San Mateo County beneficiaries who received mental health services from Contractor or who were seen on a regular basis by Contractor. This information must be provided to MHD's Contract Administration within three (3) days from the date on the termination notice. The list will include the beneficiary names, recent phone number and address.

(d) Contingency

This Agreement is contingent upon the appropriation of sufficient funding by the Federal, State and county sources for the services covered by this Agreement. If it becomes apparent to County at any time, in County's sole discretion, that insufficient funding will exist, or that funding from any source will be discontinued, delayed, denied, reduced, or disallowed for any of the services covered under this Agreement, County has the option to either terminate this Agreement without notice with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.

4.3 Conflict of Interest

Contractor will comply with all applicable Conflict of Interest provisions. County may terminate this Agreement immediately if County determines that there is a violation of the California Political Reform Act contained in

California Government Code Sections 87101 et seq. and the regulations promulgated thereunder.

4.4 Delegation of Contractor's Duties: When Permitted

- (a) Contractor and County recognize that the Psychiatric Inpatient Hospital Services to be provided hereunder are non-delegable except as provided in this Paragraph 4.4. Any attempt by Contractor to delegate or otherwise vest responsibility for performance of its duties hereunder in any manner other than those expressly permitted in this Paragraph will constitute a material breach of this Agreement.
- (b) Any delegation will require the prior written approval of County. Such prior written approval must be requested in a written application which identifies the proposed Delegate, warrants its qualifications to render services required by and in conformity with the terms of this Agreement, and identifies the specific categories of services to be delegated along with an estimate of the percentage of such services in those categories which Contractor anticipates will be rendered by the Delegate. The ability of Contractor to demonstrate that a proposed delegation does not offend the express proscriptions of this Paragraph will not bind County to grant approval of any delegate. The County's approval hereunder is contingent upon County's assessment of the burdens and benefits to the Medi-Cal program and to potentially affected Beneficiaries of that program.
- (c) All costs for services rendered by any Delegate are included in the rates paid to Contractor pursuant to Article 2 of this Agreement.
- (d) Notwithstanding subparagraph (b) of this Paragraph, no delegation will be attempted or entered into if:
 - (1) The Delegate is not licensed and certified to the same extent as that required of Contractor under Paragraph 1.2 of this Agreement; or
 - (2) The location at which the Delegate is to perform the delegated services is at such a distance from the Facility that it is beyond the range considered acceptable in the industry for provision of the delegated services or, in the opinion of County, will unnecessarily or unduly burden affected Beneficiaries.

- (e) Notwithstanding authorization under (b) of this Paragraph, Contractor will be responsible for all aspects of performance hereunder by any Delegate. Contractor hereby agrees that any default, refusal to perform or defective performance of any delegated duty or service will constitute a breach of this Agreement to the same extent as if such default, refusal to perform or defective performance had been directly committed or incurred by Contractor.

4.5 Delegation of Contractor's Duties: How Accomplished

In any delegation authorized under Paragraph 4.4(b), Contractor will contract in writing with the Delegate for performance of the duties to be performed by the Delegate, and any such written contract of delegation will include the following terms:

- (a) Covenants on the part of Contractor and the Delegate that the contract of delegation will be governed by and construed in accordance with all applicable laws and regulations and Contractor's obligations under this Agreement;
- (b) Specification of the service to be provided by the Delegate;
- (c) Specification of the term of the contract of delegation including the beginning and ending dates, as well as methods of extension, renegotiation and termination;
- (d) A warranty by the Delegate that it presently complies with, and a warranty and agreement that during the life of the delegation the Delegate will continue to comply with the licensure and certification requirements set forth as to Contractor under Paragraph 1.2 of this Agreement;
- (e) That the prior written authorization of County will be required as an express condition precedent to any amendment, rescission, abandonment or waiver of the contract of delegation;
- (f) A covenant running to County as an intended third-party beneficiary of the contract of delegation whereby the Delegate promises:
 - (1) To maintain, for at least 4 years after the close of the fiscal year in which the contract of delegation was in effect, full books and records pertaining to the goods and services furnished under the terms of the delegation in accordance

with general standards applicable to such book and record keeping;

- (2) To make the books and records maintained under (1) of this subparagraph available for inspection, examination or copying by agents of federal, state, and local agencies as set forth in Paragraph 3.2;
- (3) To make full disclosure to County of the method and amount of compensation and/or other direct or indirect consideration received by the Delegate from Contractor.
- (4) That no services rendered on behalf of Contractor by the Delegate pursuant to the contract of delegation will be billed to County or the fiscal intermediary by the Delegate, who warrants and agrees that it will look exclusively to Contractor for compensation under the terms of the contract of delegation
- (5) To hold harmless County, Department, DHS, the State of California and Beneficiaries in the event that Contractor cannot or will not pay for services performed by the Delegate pursuant to the terms of the contract of delegation.

4.6 Restriction on Contractor's Freedom to Assign Benefits Only Under this Agreement or to Engage in Organic Change

County and Contractor hereby declare their mutual recognition that the subject matter of this Agreement is personal, being founded upon County's confidence in the reputation, type and location of facilities, and other personal attributes of Contractor. For this reason:

- (a) Unless given prior written approval by County, any attempt by Contractor to make an assignment of the right to receive the contingent payment obligations of County under this Agreement will discharge County from what may otherwise have been a matured obligation of performance.
- (b) If Contractor desires to make an assignment of rights only under this Agreement, it will submit a written application for approval to County. Such an application will identify the proposed assignee and include a detailed explanation of the reason and basis for the proposed assignment. If County is satisfied that the proposed assignment is consistent with law and with the continued

receipt of satisfactory performance, the assignment will be approved in writing. The effective date of the assignment will be the date upon which County issues written approval.

- (c) Unless given prior written approval by County any attempt by Contractor to participate as a constituent entity in any merger, consolidation or sale of assets will operate as an assignment hereof and will discharge County from what may otherwise have been a matured obligation of performance under this Agreement.
- (d) If Contractor desires to participate as a constituent entity in any merger, consolidation or sale of assets it will submit a written application for approval to County. County will act upon such requests within 30 days of the receipt of such request.
 - (1) If approval is sought for participation in a merger or consolidation, the application will identify all proposed constituent entities and disclose the rights and preferences of all classes of stock in the resulting or surviving entity. In addition, the application will inform County of the licensure and certification status of the proposed resulting or surviving entity and such other information as County may require.
 - (2) If application is sought for approval of a sale of assets, such application will identify the purchaser, inform County of licensure and certification status of the purchaser and contain such other information as County may require.
 - (3) If County is satisfied that the proposed merger, consolidation or sale of assets other than in the regular course of business is consistent with the continued satisfactory performance of Contractor's obligations under this Agreement, it will be approved in writing. The effective date of the merger, consolidation or sale of assets other than in the regular course of business will be no earlier than the date upon which County issues written approval.

ARTICLE 5: GENERAL PROVISIONS

5.1 Reports

Contractor will provide County with any reports, as determined to be necessary, by the Mental Health Director or his/her designee.

5.2 Advance Directives

Contractor will comply with County Policies and Procedures regarding advance directives.

5.3 Termination of Delegate – Good Faith Effort

Contractor will make a good faith effort to give written notice of termination of a delegation with an individual, group or organizational provider, within 15 days after issuance of termination notice, to each beneficiary who is receiving mental health services on a regular basis from the terminated delegated provider.

5.4 Status as Independent Contractors

Contractor will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of County or State. No relationship of servant, employee, partnership, joint venture, or association is created or intended to be created hereby. None of the provisions of this Agreement is intended to create, nor will be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. Neither party will have the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein. Contractor will be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Contractor's personnel rendering services under this Agreement will not have any of the rights or privileges of County or State employees. Contractor and its agents, employees, and subcontractors will not have any claim against the County or State for any employee privileges and benefits including but not limited to, vacation pay, sick leave, retirement benefits, social security, workers' compensation, unemployment benefits, disability benefits, etc. Notwithstanding any reference to a managed care plan, Health Plan, or system of care, Contractor will act as an entity separate and apart

from the County and State and will be considered an independent contractor for all purposes including liability and litigation.

5.5 Hold Harmless

- (a) 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:
 - (1) Injuries to or death of any person, including Contractor or its employees/officers/agents;
 - (2) damage to any property of any kind whatsoever and to whomsoever belonging;
 - (3) 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
 - (4) 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.
 - (5) 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.

5.6 Insurance

Insurance requirements for Professional Services are as stated in Appendix B, which is incorporated by this reference.

5.7 Non-Discrimination

- (a) Non-Discrimination in Services, Benefits and Facilities

- (1) Consistent with the requirements of applicable federal or state law, Contractor will not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, HIV status, sexual preference or mental or physical handicap.
- (2) Contractor will comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.
- (3) Contractor will include the nondiscrimination and compliance provisions of this Agreement in all subcontracts to perform work under this Agreement.
- (4) Contractor will serve clients as determined by County's policies, procedures, directives, guidelines, and Cultural Competency Plan to ensure that all eligible clients receive services from clinical staff that is culturally, ethnically, and linguistically competent. In addition, services will be delivered in a manner that is considerate of clients' and family members' cultures while preserving the client's dignity and respecting their right to choose. For Cultural Competency Plan, refer to:
Need website here
- (5) In order to serve bilingual clients, Contractor will recruit, employ and maintain bilingual staff at a level designated by the County to be commensurate with the programs provided by Contractor.
- (6) Notwithstanding other provisions of this section, Contractor may require a determination of medical necessity pursuant to Title 9, CCR, section 1820.205, Section 1830.205 or Section 1830.210, prior to providing covered services to a beneficiary.

(b) Appropriate Facilities

Contractor agrees that its facilities will have access for the disabled to the extent required by Section 504 of the

Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and any federal or state provision requiring such access.

(c) Non-Discrimination in Employment

(1) The County is an equal opportunity employer. Contractor will comply with all applicable laws including County's equal opportunity requirements. Such laws include, but are not limited to the following:

(i) Title VII of the Civil Rights Act of 1964 as amended;

(ii) Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (sections 503 and 504);

(iii) California Fair Employment and Housing Act (Government Code sections 12900, et seq.;

(iv) California Labor Code sections 1101 and 1102.

(2) Contractor will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation.

(3) Contractor will give written notice of its obligations under this clause as follows:

(i) Notices. Contractor will post in a conspicuous place such notices to potential applicants and to employees, setting forth their right to be treated in conformity with the non-discrimination provisions of this Agreement.

(ii) Position Advertisements. All solicitations or advertisements for employees placed by or on behalf of Contractor will state that Contractor is an Equal Opportunity Employer.

(4) 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.

(5) 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.

(6) Non-compliance

Failure to comply with any of the requirements set forth in Paragraph 5.7(c) (1) through Paragraph 5.7 (c) (3) above will be considered a material breach of this Agreement. Such

failure will be grounds for suspension of this Agreement in whole or in part. Nothing in this Agreement will be deemed a limitation on the right of County to take any other action with respect to Contractor as a means of enforcing the anti-discrimination provisions of this Agreement as the State, County, or Federal government may require.

5.8 Clean Air Act & Federal Water Pollution Control Act

Contractor will comply with all applicable standards, orders or regulations issued pursuant to the provisions of Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, and will include such provision in all subcontracts of amounts in excess of \$100,000. Violations will be reported to the Centers for Medicare and Medicaid Services.

5.9 Provisions of Bilingual Services

- (a) When the community potentially served by Contractor consists of non-English or limited-English speaking persons, Contractor will take all steps necessary to develop and maintain an appropriate capability for communicating in any necessary second language, including, but not limited to the employment of, or contracting for, in public contact positions of persons qualified in the necessary second languages in a number sufficient to ensure full and effective communication between the non-English and limited-English speaking applicants for, and Beneficiaries of, the Contractor's services and the Contractor's employees.

Contractor may comply with this paragraph by providing sufficient qualified translators to provide translation in any necessary second language for any patient, caller or applicant for service, within a reasonable and legally permissible time of need for translation. Contractor will maintain immediate translation capability in the emergency room when five percent of the emergency room patients or applicants for emergency room services are non-English or limited-English speaking persons.

Contractor will provide immediate translation to non-English or limited-English speaking patients whose condition is such that failure to immediately translate would risk serious impairment. Contractor will post notices in prominent places in the facility of the availability of translation in the necessary second languages.

(b) As used in this Paragraph:

- (1) "Non-English or limited-English speaking persons" refers to persons whose primary language is a language other than English;
- (2) "Necessary second language" refers to a language, other than English, which is the primary language of at least 5% of either the community potentially served by the contracting facility or the facility's patient population;
- (3) "Community potentially served by the contracting facility" refers to the geographic area from which the facility derives 80% of its patient population;
- (4) "Qualified translator" is a person fluent in English and in the necessary second language, familiar with medical terminology, and who can accurately speak, read, write, and readily interpret in the necessary second language.

5.10 Integration

County and Contractor declare that this Agreement, including Appendices, contain a total integration of all rights and obligations of all parties with respect to the subject matter of this Agreement. There are no extrinsic conditions or collateral agreements or undertakings of any kind. It is the express intention of both County and Contractor that any and all prior or contemporaneous agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement which are not expressly set forth herein are of no force, effect, or legal consequence.

5.11 Headings

The headings of articles and paragraphs contained in this Agreement are for reference purposes only and will not affect in any way its meaning or interpretation.

5.12 Dispute Resolution

- (a) All disputes arising in connection with the performance by any party under this Agreement will be subjected to the provisions of this section 5. 12. Time is of the essence in the resolution of disputes. The parties will act immediately to resolve informally such disputes.
- (b) If the parties, through their respective authorized designees, cannot

mutually resolve a dispute within 7 days after written notification by any party to the other parties of the existence of such dispute, then the following procedure will apply:

- (1) Each party will appoint one person to act as an impartial mediator in an attempt to resolve such dispute. Each of the mediators will have sufficient knowledge and experience to understand such dispute but will not be a person who performs services under this Agreement. The mediators will be known as the "Dispute Resolution Group".
 - (2) The Dispute Resolution Group will convene at a location convenient to all parties, not later than 12 days following notification of the existence of such a dispute and will meet for a maximum of 4 4-hour sessions during the subsequent 7 business days in an attempt to reach resolution of such dispute which is acceptable to the parties. At such sessions, the Dispute Resolution Group may allow the parties to present arguments and other information regarding such dispute. Legal Counsel will be permitted to present arguments.
 - (3) In the event that at such sessions, the Dispute Resolution Group fails to reach a resolution of such dispute that is acceptable to all parties, then each party may assert its other rights and remedies as provided under this Agreement or provided by law.
 - (4) The parties will bear their own costs of mediation.
- (c) Nothing in this section 5.12 is intended to delay either party's right to suspend, cancel or terminate the Agreement in accordance with applicable provisions herein.

5.13 Governing Authorities

- (a) This Agreement will be governed and construed in accordance with the laws of the State of California including but not limited to Part 2.5, Division 5 of the Welfare and Institutions Code and regulations adopted pursuant thereto, and all other applicable state laws and regulations according to their content on the Effective Date, including regulations for Medi-Cal Psychiatric Inpatient Hospital Services, Title 9, and California Code of Regulations, Chapter 10.

- (b) Contractor stipulates that this Agreement, in part, implements Title XIX of the Federal Social Security Act and, accordingly, covenants that it will conform to such requirements and regulations as the United States Department of Health and Human Services may issue from time to time, except for those provisions waived by the Secretary of Health and Human Services. Titles 42 and 45 (Part 74) of the Code of Federal Regulations and all other applicable federal laws and regulations according to their content on and after the Effective Date, except those provisions or applications of those provisions waived by the Secretary of the Department of Health and Human Services.
- (c) Any provision of this Agreement in conflict with the laws or regulations stipulated in (a) of this Paragraph is hereby amended to conform to the provisions of those laws and regulations. Such amendment of the Agreement will be effective on the effective date of the statute or regulation necessitating it and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties as provided in Paragraph 5.10.
- (d) Venue will be in San Mateo County, California.

5.14 Application for Termination in the Face of a Declaration or Finding of Partial Invalidity

In the event any provision of this Agreement is declared null and void by any court of law, either party may apply to that court for permission to immediately rescind the remainder of the Agreement. In ruling upon this request the court will consider the impact upon the affected Medi-Cal population as well as the relative degree of hardship which would be imposed upon either or both of the parties if the request is denied.

5.15 Informal Amendments Ineffective, Toleration of Deviation from Terms of Agreement Not to be Construed as Waiver

- (a) It is the express intention of both County and Contractor that the terms of this Agreement will comprise their entire agreement and are not subject to rescission, modification or waiver except as defined in a subsequent written instrument executed in the same manner and with the same authority. County and Contractor mutually covenant and request of any reviewing tribunal that any claim of rescission, modification, or waiver predicated upon any evidence other than a subsequent written instrument executed in the same manner and with the same authority as this writing be

regarded as void.

- (b) The informal toleration by either party of defective performance of any independent covenant of this Agreement will not be construed as a waiver of either the right to performance or the express conditions which have been created in this Agreement.

5.16 Beneficiary Eligibility

This Agreement is not intended to change the determination of Medi-Cal eligibility for Beneficiaries in any way. However, in the event the California State Legislature or Congress of the United States enacts a statute which redefines Medi-Cal eligibility so as to affect the provision of Psychiatric Inpatient Hospital Services under this Agreement, such new definition will apply to the terms of this Agreement.

5.17 Notices

Any notice required to be given pursuant to the terms and provisions of the Agreement will be in writing and will be sent by certified mail, return receipt requested, addressed as set forth below, will be deemed to have been received on the date shown on such return receipt:

County: San Mateo County Behavioral Health & Recovery Services
Attn: Susann Reed, Contract Manager
2000 Alameda de las Pulgas, Suite 280
San Mateo, CA 94403
sreed@smcgov.org

With copy to: San Mateo County Behavioral Health & Recovery Services
Attn: Scott Gruendl, Assistant Director
2000 Alameda de las Pulgas, Suite 280
San Mateo, CA 94403
sgruendl@smcgov.org

Contractor: Fremont Hospital
Attn: Crysta Krames, Director of Business Development
39500 Sundale Drive, Suite 200
Fremont, CA 94538
Crysta.krames@uhsinc.com
510-743-2032

With copy to: BHC Fremont Hospital, Inc.

Attn: General Counsel
102 Woodmont Blvd., Suite 800
Nashville, IN 37205

5.18 Fingerprint Compliance

Contractor certifies that its employees, trainees, and/or its subcontractors, assignees, volunteers, and any other persons who provide services under this agreement, who have direct contact with any client will be fingerprinted in order to determine whether they have a criminal history which would compromise the safety of individuals with whom the Contractor's employees, trainees and/or its subcontractors, assignees, or volunteers have contact.

5.19 Certification of Healthcare Service Providers

Contractor certifies that none of its employees or agents providing service under this Agreement ("Service Providers") have been convicted of a criminal offense related to health care, nor are any listed by any federal or state agency as debarred, excluded or otherwise ineligible for participation in Medicare, Medi-Cal, or any other federal or state funded health care program. Contractor certifies that it has performed an appropriate screening of Service Providers prior to making this certification, that it will screen all new Service Providers, and that it will monitor the status of existing Service Providers. Contractor certifies that it and Service Providers possess all required licenses that such licenses are in good standing and that in providing these contract services, it and its Service Providers are operating within any and all limitations or restrictions of these licenses. Contractor further certifies that all directors, managing employees, and owners of five percent interest, or more, in Contractor's business have not been convicted of any health care related offenses nor excluded from Medicare, Medi-Cal, or any other federal or state funded health care program.

Contractor agrees to notify the County immediately should Contractor or Service Provider be investigated, charged, or convicted of a health care related offense. During the pendency of any such proceedings, Contractor, or a Service Provider may, at the request of the County, be removed from any responsibility for, or involvement in, the provision of services under this Agreement. It is the Contractor's obligation to keep the County fully informed about the status of such proceedings and to consult with the County prior to taking any action which will directly impact the County. This Agreement may be terminated immediately by County upon the actual exclusion, debarment, loss of licensure, or

conviction of Contractor or of a Service Provider of a health care offense.

Contractor will indemnify, defend, and hold harmless County for any loss or damage resulting from the conviction, debarment, or exclusion of Contractor, or Service Providers, or subcontractors.

5.20 Health Insurance Portability and Accountability Act (HIPPA), Confidentiality Laws, and PHI Security

Contractor will provide services under this Agreement in accordance with all federal, state and local laws, rules, regulations, and codes effective at the inception of this Agreement and that become effective during the term of this Agreement and execute any amendments necessary to implement such laws, including but not limited to:

- (a) 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.
- (b) Contractor will develop and maintain a written 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.
- (c) 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.
- (d) 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.
- (e) All laws for the Medi-Cal and Medicaid programs indicated above, and any regulations promulgated thereunder, as applicable.
 - (f) The applicable provisions of Titles 9 and 22 of the California Code of Regulations;
 - (g) Health Insurance Portability and Accountability Act, 45 C.F.R parts 160, 162 and 164 ("HIPAA");
 - (h) Health Information Technology for Economic and Clinical Health Act (HITECH Act), Pub. L. 111-5, Div. A, Title XIII, § 130001 et seq., Div. B, Title IV, § 4001 et seq., Feb. 17, 2009, 123 Stat. 226, 467, 42 U.S.C.A. § 300ii, et seq., and 42 U.S.C. A, § 17901, et seq.;
 - (i) California Welfare and Institutions Code section 5328 et seq.;
 - (j) California Evidence code section 1010 et seq.;
 - (k) Mental Health Services Act (MHSA Section 5890 et seq.) and any regulations promulgated thereunder;
 - (l) Any State policies as identified in the State Department of Mental Health (SDMH) or Department of Health Care Services Letters and in the Cost Reporting/Data Collection Manual ("CDRC"), and any other applicable provision of law or regulation;
 - (m) Contractor will honor the enrollee's rights while complying with the above referenced statutes and regulations.

5.21 Prohibitions on Referrals

In addition to County's and Contractor's obligations to comply with applicable federal, state and local laws respecting the conduct of their respective business and profession, County and Contractor acknowledge that they are subject to certain federal and state laws governing referral of patients which are in effect or will become effective during the term of this Agreement. These laws include prohibitions on:

- (a) Payments for referral or to induce the referral of patients (Cal. Business and Professions Code section 650; Cal. Labor Code section 3215; and section 1128B of the Social Security Act); and
- (b) The referral of patients by a contractor or its employees, subcontractors or agents for certain designated health care services to an entity with which the contractor or its employees, subcontractors or agents (or the referring parties immediate family) has a financial relationship (Cal. Labor Code sections 139.3 and 139.31, applicable to referrals for workers' compensation services; Cal. Business and Professions Code sections 650.01 and 650.02 applicable to all other patient referrals within the State; and section 1877 of the Social Security Act, applicable to referrals of Medicare and Medi-Cal patients).

5.22 Entirety

This Agreement, including its exhibits, contains the sole and entire agreement between County and Contractor with respect to the subject matter hereof and will supersede all prior agreements between the parties as of the effective date hereof. The parties acknowledge and agree that they have not made any representations with respect to the subject matter of this Agreement, or any representations inducing its execution and delivery except such representations as are specifically set forth herein.

5.23 Severability

In the event any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal or unenforceable in any respect, it will not affect any other provision of this Agreement. This Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.24 Waiver

No delay or failure to require performance of any provision of this

Agreement will constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and will apply to the specific instance expressly stated.

5.25 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

5.26 County Ordinances, Resolutions, Policies, Procedures, Directives, and Guidelines

- (a) Contractor will provide services under this Agreement in accordance with the ordinances and resolutions of the County Board of Supervisors and the applicable policies, procedures, directives, and guidelines of County, MHD, and San Mateo County.
- (b) Contractor will be in compliance with any new or modified written policy, procedure or directive within thirty (30) days from the date on the notification or sooner if required by federal, state, or local law or regulations or County, MHD, or San Mateo County policy.
- (c) Contractors that receive training from BHRS in pandemic and other disasters (All Hazards) including, but not limited to: identifying high risk populations, monitoring psychosocial reactions to All Hazards, disseminating appropriate educational materials, providing safe intervention as needed and possible, and making appropriate referrals, will, at Director's discretion, be involved in planning and response activities related to All Hazards.
- (d) Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any food and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is provided, healthier food options must be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low-calorie foods; (2) minimally processed, low sodium foods without added sugar; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall: (1) offer seasonal and local produce; (2) serve

fruit instead of sugary, high calorie desserts; (3) attempt to accommodate any special dietary or cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snacks are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snacks consist solely of nuts and/or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans- fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 milligrams of sodium per serving.

If beverages are provided, beverages that meet the County's nutritional criteria are water with no caloric sweeteners; (2) unsweetened coffee or tea, except that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

- (e) If Contractor utilizes County facilities when performing under this Agreement, Contractor and/or Service Providers will read and abide by the requirements of the San Mateo County Compliance Program, Code of Conduct, and Compliance Program Manual. Contractor and/or Service Providers will, at the request of County, attend compliance workshops provided by San Mateo County. Contractors who do not utilize County facilities will implement a compliance program and will provide County with a copy of their compliance programs, if requested.

5.27 Locker Use at Fremont Hospital

BHRS staff, BHRS contracted providers, conservators or others shall not be charged for storing personal belongings on site when visiting the facility for care coordination, quality review, and other essential clinical care duties

Signature page to follow.

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

COUNTY OF SAN MATEO

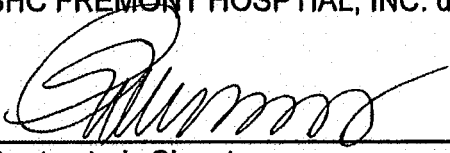
By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

BHC FREMONT HOSPITAL, INC. dba FREMONT HOSPITAL



Contractor's Signature

Date: 6/25/19

APPENDIX A

DEFINITIONS

Acute Psychiatric Inpatient Hospital Services.

"Acute Psychiatric Inpatient Hospital Services" means medically necessary inpatient hospital services covered by the Medi-Cal program and rendered to a Beneficiary for the care and the treatment of an acute episode of mental illness which do not qualify as Administrative Day(s) of service.

Administrative Day.

"Administrative Day" means a day determined by utilization management review (based on review of provided medical record documentation) to justify a level of care in either a subacute facility (including IMD, State Hospital, SNF, etc.) setting for which a bed is unavailable, or an authorized crisis residential program for which a bed is unavailable, but which does not justify a level of care in an acute psychiatric hospital. Patients who no longer require an acute hospital level of care, but who have been accepted by the County Behavioral Health and Recovery Services Director or designee for placement in an IMD, State Hospital, skilled nursing facility, or who are accepted to and awaiting placement in an authorized crisis residential program qualify for this category. Patients who no longer require an acute hospital level of care and who have been refused by the County for IMD placement, SNF placement, State Hospital placement, or crisis residential placement do not qualify for this category.

Medi-Cal Beneficiary, Un-sponsored Patient, Special Case Services Patient, Beneficiary.

"Medi-Cal Beneficiary" means a person certified as eligible for services under the Medi-Cal program according to § 51001 of Title 22 of the California Code of Regulations, as the same may be amended from time to time and for whom the County is responsible for determining Medi-Cal beneficiary eligibility pursuant to Title 22 California Code of Regulations § 50120, and whose Medi-Cal beneficiary identification number contains San Mateo County Code number "44" as the first two numbers, except that, such term does not include Medi-Cal beneficiary eligible under Part A of the Medicare program, 42 U.S.C. § 1395 et. seq., if the beneficiary has not exhausted his or her right to Medicare Part A services. The term "Beneficiary" does not include a Medi-Cal eligible person who is enrolled in a health maintenance organization, prepaid health plan or other managed care plan that is responsible for the provision of Medi-Cal psychiatric inpatient hospital services.

"Indigent Patient" means a person for whom there is no third-party payor which is or may become responsible for paying for all or part of the person's services, including, but not limited to, Medicare, Medi-Cal or private insurance.

"Beneficiary" means a person that is either a Medi-Cal Beneficiary, an Indigent Patient.

Indigent Patient/Unsponsored Patient

"Indigent Patient" means a person for whom there is no third-party payor which is or may become responsible for paying for all or part of the person's services, including, but not limited to, Medicare, Medi-Cal or private insurance.

Delegate.

"Delegate" means any natural person or legal entity to whom Contractor attempts, by contract or otherwise, to transfer the primary liability to perform any covenant assumed in this Contract.

Department

"Department" means the State Department of Mental Health for the State of California.

Fiscal Intermediary.

"Fiscal Intermediary" means that person or entity who has entered into a contract, as specified in Section 14104.3 of the California Welfare and Institutions Code, with the Department to perform fiscal intermediary services related to this Contract.

Point of Authorization.

"Point of Authorization" means Behavioral Health and Recovery Services Division of the Health Department, County of San Mateo.

Psychiatric Inpatient Hospital Services

"Psychiatric Inpatient Hospital Services" means Acute Psychiatric Inpatient Hospital Services and Administrative Day services covered by Medi-Cal program provided to a Beneficiary for the care and treatment of an episode of mental illness in the Facility. If Contractor is a free-standing acute psychiatric hospital larger than sixteen (16) beds, the term includes services rendered to persons age twenty-one (21) or older and younger than age sixty-five (65). If Contractor is an acute care hospital, the term excludes services rendered in a medical/surgical bed and any

service rendered in a bed other than a bed in an approved psychiatric unit as defined in 22 California Code of Regulation § 70575.

Regulations.

"Regulations" means the Medi-Cal Psychiatric Inpatient Hospital Services Consolidation Regulations contained in the California Code of Regulations pertaining to the rendition of mental health care which have been promulgated under California.

Welfare and Institutions Code Section 5775 et. seq. and 14680, et. seq.

Meaning of Words.

The word and terms used in this Agreement are intended to have their usual meanings, unless a particular or more limited meaning is associated with their usage in Sections 5775, et. seq., and 14680, et seq., of the California Welfare and Institutions Code or the Regulations, unless specifically defined in this Article or otherwise in this Agreement.

APPENDIX B

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS

(e.g. Medical, Legal, Financial services, etc.)

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of San Mateo or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence \$1,000,000
 - b. General aggregate \$2,000,000
 - c. Personal Injury \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Personal Injury liability
 - c. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

"County of San Mateo, and members of the Board of Supervisors of the County of San Mateo, and the officers, agents, and employees of the County of San Mateo, individually and collectively, as additional insureds."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to owned, non-owned and hired vehicles.

Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement).

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than FIFTY THOUSAND DOLLARS (\$50,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant (s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

End of Appendix B