RESOLUTION - ACTION REQUESTED 2014-350

MEETING: July 15, 2014

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Ratify the Restated Joint Exercise of Powers Agreement with CalMHSA

RECOMMENDATION AND JUSTIFICATION:
Ratify the Restated Joint Exercise of Powers Agreement with the California Mental Health Services Authority (CalMHSA).

The Joint Powers Authority (JPA) is requesting that the Board ratify this Agreement signed by James Rydingsword on August 14, 2013.

The California Mental Health Services Authority (CalMHSA) is a state subcontractor that was originally designated to operate three statewide prevention projects: suicide prevention, stigma and discrimination reduction, and student mental health. Under provisions of the Mental Health Services Act, Mariposa County was allocated $100,000 for statewide prevention and early intervention projects. Mariposa County Human Services chose to participate as a member county and support CalMHSA's statewide prevention efforts. The Board approved the original Joint Exercise of Powers Agreement on August 16, 2011, resolution 11-397.

Among the changes, CalMHSA seeks to amend the language of the original Joint Exercise of Powers Agreement and broaden its scope of programs in the following areas:

"Broaden the described Purpose of CalMHSA to expressly embrace mental and behavioral health programs including joint contracting for state hospital beds; joint administration of other state or federal programs such as the Drug Medi-Cal Treatment Program, managed mental health care for Medi-Cal beneficiaries, and specialty mental health services; operation of program risk pools; provision of fiscal or administrative services useful to the Members; and research, development and execution of policy requests from CMHDA and/or CSAC."

BACKGROUND AND HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If Mariposa County does not ratify the Restated Agreement, it may still pass if a majority of other participating counties support it. If a majority of counties does not pass the amendment, the existing Joint Exercise of Powers Agreement will remain in effect, and CalMHSA will be limited to its current scope of work.

FINANCIAL IMPACT:
There is no impact to the County General Fund or the MHSA Corrective Action Plan

ATTACHMENTS:
CalMHSA JPA Agreement Effective 7-1-2013 D (PDF)
CalMHSA JPA Agreement Effective 7-1-2013 signature page (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Rick Benson, County Administrative Office

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: John Carrier, District V Supervisor
SECONDER: Lee Stetson, District I Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
RESTATED JOINT EXERCISE OF POWERS AGREEMENT
CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY

This Agreement is executed in the State of California by and among those Members, organized and existing under the Constitution of the State of California, which are parties signatory to this Agreement. All such Members shall be listed in Appendix A, which shall be attached hereto and made a part hereof.

RECITALS

WHEREAS, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (the "Joint Exercise of Powers Act," Government Code section 6500 et seq.) permits two or more public agencies by Agreement to exercise jointly powers common to the contracting parties; and

WHEREAS, various provisions of the California Welfare and Institutions Code allow California counties to jointly conduct or administer mental and/or behavioral health programs; and

WHEREAS, counties are authorized to jointly contract for state hospital beds (WIC § 4330 et seq.); and

WHEREAS, Division 5 of the Welfare and Institutions Code authorizes counties to jointly implement various mental health services governed by that division (including but not limited to §5600 et seq., §5800 et seq., §5840 et seq. and §5850 et seq.); and

WHEREAS, Chapter 6.3 of Division 3 of Title 3 of the Government Code authorizes joint county contracts with the state for administration of programs, services, or activities including the Drug Medi-Cal Treatment Program (GC §30029.7); and

WHEREAS, Division 9 of the Welfare and Institutions Code (including but not limited to WIC §14712) authorizes joint county implementation of managed mental health care for Medi-Cal beneficiaries and joint county delivery of specialty mental health services; and
WHEREAS, statewide program risk pools for mental health plan (MHP) services are authorized under Division 9 of the Welfare and Institutions Code (including but not limited to WIC § 14718); and

WHEREAS, the Members executing this Agreement desire to join together for the purpose of jointly exercising their powers under any or all of the statutes referenced above, or any other statute governing county provision of mental and/or behavioral health programs, services or activities.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1
PURPOSES

This Agreement is entered into by the Members in order to create a separate public entity to provide administrative and fiscal services in support of the Members' Mental/Behavioral Health Departments acting alone or in collaboration with other such Departments, which may include operation of Programs to:

(a) Administer prevention and early intervention services under the Mental Health Services Act;

(b) Contract and/or negotiate with the State or other providers of mental hospital beds and similar or related services;

(c) Contract and/or negotiate with the State or federal government for administration of mental health services, programs or activities including but not limited to the Drug Medi-Cal Treatment Program, managed mental health care, delivery of specialty mental health services;

(d) Operate program risk pools;

(e) Provide any other similar or related fiscal or administrative services that would be of value to Members such as group purchasing, contract management,
research and development, data management, maintenance of a research depository, training, technical assistance, capacity building, education and training; and

(f) Research, develop, and execute any appropriate policy requests from the California State Association of Counties ("CSAC") or its affiliates.

It shall be the intent of the Authority that all such Programs are fiscally self-contained requiring no additional funding from Members. Accordingly, no Member shall be obligated to fund the Authority or any Program in an amount greater than the amount to which the Member has previously agreed. The indirect costs to operate the Authority shall be allocated to each of the Programs operated by the Authority as directed by its Members.

ARTICLE 2
PARTIES TO THE AGREEMENT

Each Member, as a party to this Agreement, certifies that it intends to and does contract with all other Members as parties to this Agreement and, with such other Members as may later be added as parties to this Agreement. Each Member also certifies that the withdrawal, expulsion, or other removal of any party from this Agreement shall not terminate this Agreement or the Member's obligations hereunder.

ARTICLE 3
CREATION OF THE AUTHORITY

Pursuant to the Joint Powers Act, there is hereby created a public entity separate and apart from the parties, hereto, to be known as the California Mental Health Services Authority, with such powers as are hereinafter set forth.

Pursuant to the Government Code, Section 6508.1, the assets, debts, liabilities, and obligations of the Authority shall not constitute assets, debts, liabilities, or obligations of any
party to this Agreement. However, a party to the Agreement may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the Authority.

ARTICLE 4
POWERS OF THE AUTHORITY

The Authority shall have all of the powers common to General Law counties in California and all additional powers set forth in the Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (beginning with Section 6500), and is hereby authorized to do all acts necessary for the exercise of said powers. Such powers include, but are not limited to, the following:

(a) To make and enter into contracts.

(b) To incur debts, liabilities, and obligations.

(c) To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities.

(d) To sue and be sued in its own name, and to settle any claim against it.

(e) To receive and use contributions and advances from Members as provided in Government Code Section 6504, including contributions or advances of personnel, equipment, or property.

(f) To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5.

(g) To carry out all provisions of this Agreement.

(h) To define fiscal and Program participation and withdrawal provisions of Members.

(i) Said powers shall be exercised pursuant to the terms hereof and in the manner provided by law.
ARTICLE 5
TERM OF THE AGREEMENT

This Agreement shall become effective on July 1, 2009. This Agreement shall continue in effect until lawfully terminated as provided herein and in Bylaws.

ARTICLE 6
BOARD OF DIRECTORS

The Authority shall be governed by the Board of Directors, which shall be composed of the local county or city mental health director from each Member, appointed or designated, and acknowledged in writing, by the Member governing body and serving at the pleasure of that body. Each director shall also designate an alternate director who shall have the authority to attend, participate in and vote at any meeting of the Board when the director is absent. A Director or alternate director, upon termination of office or employment with the county, shall automatically terminate membership on the Board.

The Board shall exercise all powers and conduct all business of the Authority, either directly or by delegation except to the extent prohibited by this Agreement, the Bylaws, or applicable law.

The Board shall elect officers, consisting of a president, vice-president, treasurer, and secretary, according to procedures specified in Bylaws. The Board may create committees, including an Executive Committee, consistent with the procedures set forth in Bylaws.

To adhere to the regulations of the Fair Political Practices Commission (Title 2, Division 6, California Code of Regulations), each Director and alternate shall file with the Authority the required Fair Political Practices Commission (FPPC) forms upon assuming office, during office, and upon termination of office.

Any vacancy in a director position shall be filled by the appointing governing body, subject to the provisions of this Article.
The presence of a majority of the membership of the Board shall constitute a quorum for the transaction of business. Following the establishment of a quorum, measures may normally be passed by a simple majority of Members present and voting. As to an action that affects only one of the Authority’s Programs, only those Members who represent counties participating in that Program will be counted in determining whether there is a quorum and whether there is approval by a majority.

Notwithstanding the preceding paragraph, upon the motion of any Board Member, seconded by another, passage of a measure by the Board will require approval through a weighted voting procedure. For weighted voting purposes there shall be a total of 75 votes. Each Member shall have one vote. The remaining votes shall be allocated among the Members based on the most recent census. This calculation shall be performed and reviewed annually in June, prior to the next fiscal year. Any weighted vote will be a roll call vote. Weighted votes must be cast in whole by the voting county and may not be split.

At any meeting at which a quorum is initially present, the Board may continue to transact business notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that each action is approved by at least a majority of the number required to constitute a quorum, and is taken subject to the above-stated proviso concerning actions restricted to one Program and to special voting requirements, if any, stated elsewhere in this Agreement. If a quorum of the Board is not present, the Executive Committee may act in the Board’s stead if a quorum of the Executive Committee is present, except as to those actions listed in the Bylaws as requiring action of the full Board.

ARTICLE 7
ACCOUNTS AND RECORDS

(a) Annual Budget. The Authority shall annually adopt an operating budget which shall include a separate budget for each Program under development or adopted and implemented by the Authority.
(b) Funds and Accounts. The Authority shall establish and maintain such funds and accounts as may be required by Generally Accepted Accounting Principles, or by any provision of law or any resolution of the Authority. Books and records of the Authority shall be open to inspection at all reasonable times by authorized representatives of Members. Additionally, the Authority shall adhere to the standard of strict accountability for funds set forth in Government Code Section 6505.

(c) Annual Audit. Pursuant to Government Code Section 6505, the Authority shall either make or contract with a certified public accountant to make an annual Fiscal Year audit of all accounts and records of the Authority, conforming in all respects with the requirements of that section. By unanimous request of the Board, the audit may be biennial as permitted by Government Code section 6505, subdivision (f). A report of the audit shall be filed as a public record with each of the Members and also with the county auditor of the county where the home office of the Authority is located and shall be sent to any public agency or person in California that submits a written request to the Authority. The report shall be filed within twelve months of the end of the Fiscal Year or years under examination. Costs of the audit shall be considered a general expense of the Authority.

ARTICLE 8
RESPONSIBILITIES FOR FUNDS AND PROPERTY

The Treasurer of the Board shall have the custody of and disburse the Authority's funds. He or she may delegate disbursing authority to such persons as may be authorized by the Board of Directors to perform that function consistent with Government Code Section 6505.6, subject to the requirements of (b) below.
Pursuant to Government Code Section 6505.5, the Treasurer of the Board shall:

(a) Receive and acknowledge receipt for all funds of the Authority and place them in the treasury so designated by the Treasurer of the Board to the credit of the Authority.

(b) Be responsible upon his or her official bond for the safekeeping and disbursements of all Authority funds so held by him or her.

(c) Be responsible for oversight of payment, when due, out of money of the Authority so held, all sums payable by the Authority. The Board of Directors may delegate authority to anybody or person to make such payments from Authority funds.

(d) Verify and report in writing to the Authority and to Members, as of the first day of each quarter of the Fiscal Year, the amount of money then held for the Authority, the amount of receipts since the last report, and the amount paid out since the last report.

Pursuant to Government Code Section 6505.1, the Authority shall designate the public office or officers or person(s) who shall have charge of, handle, and have access to the property of the Authority and shall require such officer(s) or person(s) to file an official bond in amount fixed by the contracting parties.

ARTICLE 9
WITHDRAWAL

a) A Member may withdraw as a party to this Agreement upon written notice no later than December 31 of the Fiscal Year, effective the end of the Fiscal Year, to the Authority if it has never become a participant in any Program or if it has previously withdrawn from all Programs in which it was a participant.

b) A Member Withdrawal from Programs will be defined in the specific Program Bylaws.
ARTICLE 10

EXPULSION

Notwithstanding the provisions of Article 8, the Board of Directors may:

(a) Expel any Member from this Agreement and membership in the Authority, on a two-thirds (2/3) vote of the Board Members present and voting. Such action shall have the effect of terminating the Member's participation in all Programs of the Authority as of the date that its membership is terminated.

(b) Expel any Member from participation in a Program of the Authority, without expelling the Member from the Authority or participation in other Programs, on a majority vote of the Board Members present and voting who represent participants in the Program.

The Board shall give sixty (60) days advance written notice of the effective date for any expulsion under the foregoing provisions. Upon such effective date, the Member shall be treated the same as if it had voluntarily withdrawn from this Agreement, or from the Program, as the case may be.

ARTICLE 11

EFFECT OF WITHDRAWAL OR EXPULSION

Except as provided below, a Member who withdraws or is expelled from this Agreement and membership in the Authority, or from any Program of the Authority, shall not be entitled to the return of any payment to the Authority, or of any property contributed to the Authority.

A Member that has withdrawn from a Program pursuant to Article 9 or that has been expelled from a Program pursuant to Article 10 shall be obligated for its prorata share of expenses incurred during the Member's participation in any Program, including any expenses
unavoidably incurred thereafter. The Authority will return any contribution made by the Member that exceeds the expenses allocated to that Member.

In the event of termination of this Agreement, a withdrawn or expelled Member may share in the distribution of assets of the Authority to the extent provided in Article 12.

ARTICLE 12
TERMINATION AND DISTRIBUTION OF ASSETS

A two-thirds vote of the total voting membership of the Authority, consisting of Members, acting through their governing bodies and the voting Board Members from the Member public entities, is required to terminate this Agreement; provided, however, that this Agreement and the Authority shall continue to exist after such election for the purpose of disposing of all claims, distributing all assets, and performing all other functions necessary to conclude the affairs of the Authority.

Upon termination of this Agreement and following disposition of all claims against and obligations of the Authority, all remaining assets of the Authority in each Program shall be distributed among those Members who participated in that Program in proportion to their cash contributions and property contributed (at market value when contributed). The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending claim or other liability covered by the Program.

ARTICLE 13
LIABILITY OF BOARD OF DIRECTORS, OFFICER, COMMITTEE MEMBERS AND ADVISORS

The Members of the Board of Directors, Officers, committee members and advisors to any Board or committees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement.
They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by the agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest.

No Director, Officer, committee member or advisor to any Board member, Officer or committee member shall be responsible for any action taken or omitted by any other Director, Officer, committee member, or advisor to any committee. No Director, Officer, committee member or advisor to any committees shall be required to give a bond or other security to guarantee the faithful performance of their duties pursuant to this Agreement.

The funds of the Authority shall be used to defend, indemnify and hold harmless the Authority and any Director, Officer, committee member or advisor to any committee for their actions taken within the scope of the Authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide such coverage as is hereinabove set forth.

ARTICLE 14
BYLAWS

The Board shall adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Authority.

ARTICLE 15
NOTICES

The Authority shall address notices, billings and other communications to a Member as directed by the Member. Each Member shall provide the Authority with the address to which communications are to be sent. Members shall address notices and other communications to the Authority to the Executive Director of the Authority, at the office address of the Authority as set for in the Bylaws.
ARTICLE 16

AMENDMENT

Adoption of any amendment to this Agreement requires approval by the Board, followed by ratification of the amendment by the governing boards of two-thirds of the Members. Such Agreement shall become effective upon ratification by governing boards of the requisite number of Members.

ARTICLE 17

PROHIBITION AGAINST ASSIGNMENT

No Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member shall have any right, claim or title to any part, share, interest, fund, or asset of the Authority.

ARTICLE 18

DISPUTE RESOLUTION

When a dispute arises between the Authority and the Member, the following procedures are to be followed:

(a) Request for Reconsideration. The Member will make a written request to the Authority for the appropriate committee to reconsider their position, citing the arguments in favor of the Member and any applicable case law that applies. The Member can also request a personal presentation to the governing body, if it so desires.
(b) Committee Appeal. The committee responsible for the Program having jurisdiction over the decision in question will review the matter and reconsider the Authority's position. This committee appeal process is an opportunity for both sides to discuss and substantiate their positions based upon legal arguments and the most complete information available. If the Member requesting reconsideration is represented on the committee having jurisdiction, the committee member shall be deemed to have a conflict and shall be excluded from any vote.

(c) Executive Committee Appeal. If the Member is not satisfied with the outcome of the committee appeal, the matter will be brought to the Executive Committee for reconsideration upon request of the Member. If the Member requesting reconsideration is represented on the Executive Committee, that Executive Committee member shall be deemed to have a conflict and shall be excluded from any vote.

(d) Arbitration. If the Member is not satisfied with the outcome of the Executive Committee appeal, the next step in the appeal process is arbitration. The arbitration, whether binding or non-binding, is to be mutually agreed upon by the parties. The matter will be submitted to a mutually agreed arbitrator or panel of arbitrators for the determination. If binding arbitration is selected, then of course the decision of the arbitrator is final, and both sides agree to abide by the decision of the arbitrator. The cost of arbitration will be shared equally by the involved Member and the Authority.

(e) Litigation. If, after the following the dispute resolution procedures above either party is not satisfied with the outcome of the non-binding arbitration process, either party may consider litigation as possible means of seeking a remedy to the dispute.
ARTICLE 19
DEFINITIONS

"Agreement" shall mean the Joint Powers Agreement of the California Mental Health Services Authority.

"Authority" shall mean the California Mental Health Services Authority created by this Agreement.

"Board of Directors" or "Board" shall mean the governing body of the Authority.

Authority "Fiscal Year" shall mean that period of twelve months which is established by the Board of Directors as the Fiscal Year of the Authority.

"Government Code" shall mean the California Government Code.

"Executive Committee" shall be defined by the bylaws, as to composition, powers, and terms.


"Member" shall mean any county or city operating a mental health program which, through the membership of its Director of Mental Health as appointed by the governing body (pursuant to Welfare & Institutions Code Section 5751) has executed this Agreement and become a Member of the Authority.

"Program" shall mean the mental and/or behavioral health initiatives, but not limited to, that are described in this Agreement. The Board of Directors or the Executive Committee may determine applicable criteria for determining Member's eligibility in any Program, as well as establishing Program policies and procedures.

ARTICLE 20
AGREEMENT COMPLETE

This Agreement constitutes the full and complete Agreement of the parties.

CalMHSA JPA – Effective July 1, 2013
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<td>Stacey Cryer</td>
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<td>Dr. Jamies A. Waterman</td>
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<td>Alan Yamamoto</td>
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<td>Jesse H. Duff</td>
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<td>Gary R. Blatnick</td>
<td>Del Norte County</td>
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<td>Donnell Ewert</td>
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<td>Dr. Timothy Durick</td>
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CalMHSA JPA – Effective July 1, 2013
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<thead>
<tr>
<th>Name</th>
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<tr>
<td>Michael Heggarty</td>
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<td>Robin Roberts</td>
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<td>Victor Singh</td>
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<td>Dr. Gail Zwier</td>
<td>Inyo County</td>
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<td>Mary Anne Ford Sherman</td>
<td>Kings County</td>
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<tr>
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</tbody>
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Date Adopted: July 1, 2009

Amended Effective: June 10, 2010

Amended Effective: July 1, 2013

Approved as to form:

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