RESOLUTION - ACTION REQUESTED 2016-492

MEETING: September 20, 2016

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Merced County Mental Health Agreement to Provide Inpatient Services to Mariposa Co Behavioral Health

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with the County of Merced to provide Inpatient Psychiatric Services to Mariposa County Behavioral Health in an amount not to exceed $50,000; and authorize the Board of Supervisors Chair to sign the Agreement.

Mariposa County does not operate inpatient psychiatric health facilities and therefore contracts for such placements. Multiple contracts are necessary as beds are in short supply throughout California. We have successfully contracted with this facility since 2004.

Under this contract, Mariposa County Behavioral Health will reimburse Merced County the daily Psychiatric Health Facility rate of $1,232.80 per acute day, in an annual amount not to exceed $50,000. Additional physician's fees may apply as described in paragraph 6.d of the Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The previous contract was approved on November 24, 2015 by Resolution No. 2015-553.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this contract is not approved, Behavioral Health crisis response workers will have greater difficulty in placing clients who require emergency psychiatric hospitalization. This may negatively impact County residents and other clients who may require emergency psychiatric services.

FINANCIAL IMPACT:
This contract has no impact on the General Fund. This contract will continue to be paid by realignment revenue within the Behavioral Health budget unit 001-0402.

ATTACHMENTS:
Merced County Behavioral Health 2017 Wc-sig  (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier
CONTRACT NUMBER: 

DEPARTMENT: Mental Health 

COMPANY: Mariposa County Behavioral Health and Recovery 

TYPE OF AGREEMENT: Inpatient Services 

THIS AGREEMENT is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "COUNTY"), and Mariposa County, located at 5362 Lemee Lane, Mariposa, CA, a political subdivision of the State of California, (hereinafter referred to as "MARIPOSA").

WHEREAS, COUNTY, through its Mental Health Department, operates a Psychiatric Health Facility, (PHF); and

WHEREAS, MARIPOSA, through its Health and Human Services Agency, Behavioral Health Branch, has need for additional mental health facilities and psychiatric services for the treatment of their consumers; and

WHEREAS, COUNTY, upon availability, can provide such facilities and psychiatric services as needed by MARIPOSA.

WHEREAS, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

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

1. RESPONSIBILITIES OF COUNTY

a. COUNTY shall make beds available at COUNTY’s Psychiatric Health Facility (PHF) to MARIPOSA beneficiaries for the treatment of adults based upon availability and approval by COUNTY’s Director of Mental Health Department, or designee.

b. COUNTY shall admit MARIPOSA consumers through COUNTY’s Crisis Stabilization Unit (CSU) staff, or directly to the PHF.

c. COUNTY’s Utilization Review (UR) staff will monitor MARIPOSA consumers at COUNTY’s PHF on an ongoing basis to determine medical necessity.
d. COUNTY when available may provide consumers, as clinically indicated, with all required and related psychiatric medical services including, but not limited to, laboratory service, radiology service, E.E.G.s, E.K.G.s and pharmacy service. COUNTY shall provide these services in accordance with the COUNTY Mental Health Medication Monitoring Screening Criteria Manual without any other prior authorization process. Such services may be provided through independent contractors, but if so done, COUNTY shall remain responsible for the monitoring of such subcontractors and the work thereof.

e. COUNTY shall not obtain non-required services for any MARIPOSA consumers without prior authorization from those persons designated by MARIPOSA except when, in the opinion of the Medical Director of the facility, or designee, the immediate provision of medical services is necessary to preserve the life of the consumers, or to prevent extreme pain or loss of limb or other function.

f. Where special medical, surgical or other additional services are deemed appropriate, the authorization of MARIPOSA shall be obtained. Notification shall be given to MARIPOSA when reasonably possible if consumers are moved off the psychiatric ward or are the subject of, or have committed any unusual incidents. If prior authorization for non-psychiatric treatment is not obtained in writing for MARIPOSA consumers as set forth above, MARIPOSA shall not be financially responsible for the provision of such services.

g. Facility: COUNTY shall maintain a facility, which will provide an environment conducive to the treatment of MARIPOSA consumers. This facility shall include, but not be limited to, adequate room, patient bed space, and individual storage for patient use, telephone service, and patient access to the Patient’s Rights Advocate, family members and visitors. Monolingual patients shall have access to bilingual staff services. The consumers will receive face-to-face contact daily with a psychiatrist. COUNTY’s psychiatrist will document medical necessity daily.

h. Protection of Rights: COUNTY agrees to protect the rights of MARIPOSA consumers admitted for services in compliance with State and Federal law, including, but not limited to, Welfare and Institutions Code Section 5325, especially with regard to administration of
psychotropic medication and use of seclusion. When necessary, MARIPOSA shall obtain appropriate court orders.

Admission for Services: The decision to admit MARIPOSA consumers referred by designated MARIPOSA staff for treatment is at the sole discretion of COUNTY. Prior to admission into COUNTY’S PHF, MARIPOSA’S representative shall sign and immediately return to COUNTY a “Service and Payment Authorization Form”, attached hereto as Exhibit A, indicating that MARIPOSA is responsible for all costs associated with the placement of the consumer in COUNTY’S PHF. Prior to admission into COUNTY’S PHF, MARIPOSA consumers shall first be cleared for admission and MARIPOSA shall be responsible for any costs associated with their consumers screening and clearance. Once MARIPOSA consumers are admitted by COUNTY into the PHF, COUNTY shall provide MARIPOSA consumers twenty-four (24) hour hospitalization for seventy-two (72) hour involuntary evaluation and treatment in Welfare and Institutions Code Section 5150 et seq., and any further period of involuntary treatment as required. Treatment services provided by COUNTY shall include intake, assessment, counseling, activities, room and board, security, and such medical care as is directly incidental to the provision of psychiatric services (e.g., pharmacy services and medications and laboratory services necessary for the prescription and administration of medications). MARIPOSA shall use its best efforts to provide COUNTY with such patient information as is reasonably necessary to aid COUNTY in providing treatment to MARIPOSA consumers.

j. COUNTY shall if reasonably possible provide prior notification to MARIPOSA liaison of any early discharge, especially if a consumer leaves prior to the full 72-hour stay.

2. RESPONSIBILITIES OF MARIPOSA

a. MARIPOSA shall make requests for admission by phone to COUNTY’s PHF designated staff at (209) 381-6819.

b. MARIPOSA shall be responsible for their consumers’ initial medical screening and clearance prior to admission at COUNTY’s PHF. Each consumer’s screening and clearance must be charted within twenty-four (24) hours of admission. MARIPOSA shall be responsible for any costs associated with their consumers screening and clearance.
c. After obtaining admitting privileges to COUNTY's PHF, MARIPOSA physicians, at their option, shall serve as the attending physicians at COUNTY's PHF when providing care for their consumers, including performing charting services.

d. MARIPOSA or its designee, the MARIPOSA Sheriff Department, shall provide all required consumer transportation to and from COUNTY's PHF for those consumers who are MARIPOSA residents.

e. As needed, MARIPOSA, or its designee, shall provide two (2) guards, twenty-four (24) hours per day to monitor MARIPOSA inmates or mutually agreed high risk patients admitted to COUNTY'S PHF.

f. If it becomes a necessity that MARIPOSA patients admitted to COUNTY's PHF require guard services, COUNTY shall provide guard services through its security sub-contractor. COUNTY shall notify MARIPOSA of the need for services. MARIPOSA shall reimburse COUNTY for the cost to provide guard services to MARIPOSA patients.

3. JOINT RESPONSIBILITIES

The decision to discharge MARIPOSA consumers from COUNTY's PHF shall be by COUNTY providers after efforts to contact for consultation with the MARIPOSA liaison. The MARIPOSA liaison may participate in discharge planning at their discretion and as indicated.

A Discharge Summary for MARIPOSA consumers of inpatient psychiatric services shall be provided to MARIPOSA staff. This data shall consist of the following: (1) completed discharge form, (2) patient history, (3) physical exam results, and (4) any laboratory work performed. The discharge summary shall be provided to MARIPOSA no later than fourteen (14) working days after the date the MARIPOSA consumer is discharged from COUNTY's facility. COUNTY shall also provide MARIPOSA additional records and data, including, but not limited to, treatment costs data, as may be required by MARIPOSA for the preparation of the patient for post-hospitalization placement and/or preparation of required reports. COUNTY shall permit qualified MARIPOSA staff to document in COUNTY's records pertinent data necessary for the MARIPOSA consumers care and funding within the provisions and limitations of HIPAA. All such documentation shall clearly show the entries to be MARIPOSA staff.
4. TERM

The term of this Agreement shall begin as of the 1st day of July, 2016 and continue until the 30th day of June 2017, unless sooner terminated in accordance with Sections entitled, “TERMINATION FOR CONVENIENCE” or “TERMINATION FOR CAUSE” as set forth elsewhere in this Agreement.

5. RATES

COUNTY rates for services provided pursuant to the terms and conditions of this Agreement are as follows:

For the period of July 1, 2016 through June 30, 2017:

Psychiatric Health Facility (PHF) Rate per Consumer (Acute and Non-Acute)

COUNTY shall bill MARIPOSA the difference between COUNTY’S Published PHF Charge of $1,072.00 per client per day and any reimbursements received from the State Medi-Cal billing process or any other payer sources. COUNTY shall include an explanation of benefit received from other payer sources with bill.

Administrative Overhead Charge (15%) per Consumer (Acute and Non-Acute)

COUNTY shall also bill MARIPOSA $160.80 per client per day, which is 15% of COUNTY’S Published PHF Charge.

The rate structure utilized to negotiate the contract is inclusive of all services defined as psychiatric inpatient services in Title 9, Chapter 11, and that the rate structure does not include non-hospital based physician or psychological services. The total amount of services per the above rates shall not exceed the Total Contract Amount of FIFTY THOUSAND DOLLARS AND NO CENTS ($50,000.00)

6. COMPENSATION

MARIPOSA agrees to pay COUNTY and COUNTY agrees to receive payment for services provided to MARIPOSA consumers authorized for treatment under this Agreement.

a. In the event that MARIPOSA has reimbursed COUNTY for services and then verifies to COUNTY that a non-Medi-Cal eligible consumer has current or retroactive Medi-Cal eligibility that pays for inpatient hospital services and the verification is within the
allowable Medi-Cal billable timeframe, COUNTY shall credit MARIPOSA on the next month’s invoice the amount subsequently reimbursed to COUNTY from the State Medi-Cal billing process for that consumer.

b. COUNTY shall bill MARIPOSA for all non-acute days incurred at COUNTY’S current Published PHF rate plus the Administrative Overhead Charge, as set forth in Section 5, “Rates”.

c. Bed day shall be defined as use of a COUNTY PHF inpatient psychiatric bed at 12:00 midnight. Day of discharge shall not be billed. However, a bed day may be billed if the beneficiary is admitted and discharged during the same day provided that such admission and discharge is not within 24 hours of prior discharge. This per diem rate is considered to be payment in full, subject to third party liability and patient share of costs for psychiatric inpatient hospital services to a beneficiary.

d. MARIPOSA agrees to pay COUNTY SEVENTY SIX DOLLARS AND NO CENTS ($76.00) per exam for history and physical examinations performed at the facility by COUNTY’S sub-contractor, in accordance with regulations (one exam per consumer per admission).

e. If it is determined that a MARIPOSA client is in need of special one-to-one supervision services, COUNTY shall obtain prior authorization from MARIPOSA. When COUNTY provides one-to-one supervision services, MARIPOSA shall reimburse COUNTY at the actual hourly salary rate of the COUNTY staff providing the service. COUNTY shall invoice MARIPOSA for this service and rate.

f. Payment by MARIPOSA shall be monthly in arrears for services provided by COUNTY during the preceding month. Payment by MARIPOSA shall be within forty-five (45) days of receipt of COUNTY’s invoices.

g. County Medical Services Program (CMSP) (for CMSP Counties only)

The following procedures will only be applicable if there is an agreement in place between MERCED COUNTY and the CMSP Third Party Administrator.

1. For OTHER COUNTY consumers enrolled in the County Medical Services Program (CMSP) and admitted to MERCED COUNTY’S PHF, MERCED
COUNTY shall bill the CMSP Third Party Administrator per CMSP guidelines and at the CMSP reimbursable per diem rate.

2. COUNTY shall bill OTHER COUNTY and OTHER COUNTY shall be responsible for the difference between CMSP's reimbursable per diem rate and MERCEDES COUNTY'S billable rates as set forth in Section 5 of this agreement.

3. OTHER COUNTY shall also be responsible for reimbursing MERCEDES COUNTY for any ancillary services provided, such as physical examinations, guard services and/or reimbursement for destruction of property as set forth elsewhere in this Agreement.

4. If, for any reason, CMSP denies reimbursement of the claim submitted by MERCEDES COUNTY for services provided to OTHER COUNTY consumers, OTHER COUNTY shall be responsible for reimbursing MERCEDES COUNTY the total amount due for services provided.

5. If OTHER COUNTY authorizes an inpatient stay in excess of the limited number of inpatient days reimbursable by the CMSP third party administrator then OTHER COUNTY shall be responsible for reimbursing MERCEDES COUNTY the total amount due for services not reimbursed by the CMSP.

6. OTHER COUNTY shall be solely responsible for negotiation of appeals with CMSP for denial of claims.

7. INVOICING

COUNTY Fiscal Services shall invoice MARIPOSA monthly, addressed to the following:

MARIPOSA County Behavioral Health and Recovery Services, P.O. Box 99, MARIPOSA, CA 95338

Attn: Accounting.

8. NOTICES

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by return receipt.

D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender’s account, notice is effective on delivery, if delivery is confirmed by the delivery service.

E. Electronic Transmission. When sent by facsimile transmission or by internet connection to the last noticed facsimile or internet location provided by the recipient to the party giving notice, notice is effective upon receipt, provided that a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery to the receiving party. Any notice given by electronic transmission shall be deemed received on the next business day if received after 5:00 P.M. (recipient’s time) or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

**COUNTY**

**MERCEDES COUNTY**

Director
Merced County Mental Health
P.O. Box 2087
Merced, CA 95344
(209) 381-6813
 Fax (209) 725-8628

**MARION COUNTY**

Director
Marion County Behavioral Health
P.O. Box 99
5362 Lemee Lane
Marion, CA 95338
(209) 966-7878
 Fax (209) 966-8251

Any party may change its address or electronic addresses by giving the other party notice of the change in any manner permitted by this Agreement.
9. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

The services and compensation received by COUNTY and MARIPOSA pursuant to this Agreement is based on the continued receipt of local, state and/or federal funding for this purpose. In the event that funding is terminated, in whole or in part, for any reason, this Agreement and all obligations of the parties arising from this Agreement shall be immediately discharged. COUNTY agrees to inform MARIPOSA and MARIPOSA shall inform COUNTY no later than ten (10) calendar days after receiving notification that funding will be terminated and provide the final date for which funding will be available.

10. TERMINATION FOR CONVENIENCE

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by COUNTY at any time without cause or legal excuse by providing MARIPOSA with thirty calendar (30) days notice of such termination.

11. TERMINATION FOR CAUSE

If MARIPOSA materially defaults in the performance of or repeatedly fails to comply with any of its payment obligations under this Agreement, or otherwise breaches this Agreement (a "Default"), COUNTY may, in addition to any other remedies it may have, provide MARIPOSA with notice of Default in the manner set forth under Section, "NOTICES", specifying the provision(s) or term(s) of this Agreement that MARIPOSA has failed to comply with or breached. In the event of any proceeding by or against MARIPOSA, including but not limited to bankruptcy, insolvency, appointment of a receiver or trustee, or an assignment for the benefit of creditors, COUNTY may exercise at its election its right of termination under this Section.

12. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

13. INSURANCE

MARIPOSA and COUNTY each represent that their county is self-insured and that such self-insurance includes professional liability for employees, contractors, and physicians and includes Workers Compensation coverage as required by the California Labor Code.
14. INDEMNIFICATION

MARIPOSA shall have the contracted duty (hereinafter “the duty”) to indemnify, defend and hold harmless, COUNTY, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney’s fees, costs, which shall include but not be limited to expert fees and costs, and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with MARIPOSA’S performance of this Agreement. This duty shall include but not be limited to claims for bodily injury, property damage, personal injury, contractual causes or damages otherwise experienced to, of, or by any person including, but not limited to employees, agents, officers, volunteers, and third parties. MARIPOSA’S liability for indemnity under this Agreement shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the MARIPOSA and MARIPOSA’S employees, subcontractors, and agents. This duty shall arise at the first claim or allegation of liability against COUNTY.

COUNTY shall have the contracted duty (hereinafter “the duty”) to indemnify, defend and hold harmless, MARIPOSA, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney’s fees, costs, which shall include but not be limited to expert fees and costs, and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with COUNTY’S performance of this Agreement. This duty shall include but not be limited to claims for bodily injury, property damage, personal injury, contractual causes or damages otherwise experienced to, of, or by any person including, but not limited to employees, agents, officers, volunteers, and third parties. COUNTY’S liability for indemnity under this Agreement shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the COUNTY and COUNTY’S employees, subcontractors, and agents. This duty shall arise at the first claim or allegation of liability against MARIPOSA.

15. INDEPENDENT CONTRACTOR

It is mutually agreed and understood that neither party nor its contractors, sub-contractors and employees, if any, shall have any claim under this Agreement or otherwise against the other party for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.
MARIPOSA shall ensure that all personnel used as contractors, sub-contractors and employees to perform the services reserved for MARIPOSA, are aware that COUNTY is not responsible for any benefits or coverage for their efforts.

16. CONFIDENTIALITY

MARIPOSA and COUNTY agree to protect the rights of consumers and shall comply with applicable laws and regulations, including but not limited to California W & I Code Section 5328; 45 Code of Federal Regulations, (C.F.R.) Section 205.50; 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 and to the HITECH Act in 42 C.F.R., Chapter 156, regarding the confidentiality of patient information.

Neither party shall use identifying information for any purpose other than carrying out the obligation under this contract. Neither party shall disclose, except as otherwise specifically permitted by the contract or authorized by the client/patient, any such identifying information to anyone other than the State without prior written authorization from the State in accordance with State and Federal laws.

For the purposes of the above paragraphs, identifying information will include, but not be limited to: name, identifying number, symbol, or other identifying particular assigned the individual. MARIPOSA and the COUNTY agree to comply with the provisions of Public Law 104-191, known as The Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Business Associate Addendum, attached to this Agreement and incorporated by this reference as if fully set forth herein. Any conflicts between the terms and conditions of this Agreement and the Business Associate Addendum incorporated are to be read so that the more legally stringent terms and obligation(s) of the COUNTY and MARIPOSA shall control and be given effect.

17. COMPLIANCE AND INTEGRATED ETHICS

COUNTY is committed to adhere to its adopted code of ethics to ensure that business is conducted in an ethical and professional manner; and is consistent with the mission statement: “To provide effective, accessible, and culturally competent Mental Health and Alcohol & Drug Services in order to enhance the health welfare and quality of life in Merced County.”

The COUNTY Mental Health Department’s Compliance and Integrated Ethics Plan (CIEP) is necessary to ensure compliance with federal, state, and local laws, rules, and regulations regarding professional conduct and to ensure that the conduct of employees reflects the principles of the
Department to treat consumers, the general public, and other employees with integrity, honesty, courtesy, fairness, and respect.

MARIPOSA COUNTY agrees to establish ethical standards for all staff employed by MARIPOSA. These standards shall include compliance with state and federal regulations for safeguarding client information. MARIPOSA agrees to orientate and train staff to enforce established ethical standards. MARIPOSA agrees to establish written policies and procedures that ensure organizational and individual compliance.

18. CULTURAL COMPETENCY

"Cultural Competence" means a set of congruent practice skills, behaviors, attitudes and policies in a system, agency or among those persons providing services that enables that system, agency or those persons providing services to work effectively in cross-cultural situations. MARIPOSA shall use professional skills, behaviors, attitudes and policies in their systems that ensure the system, or those being seen in the system, will work effectively in a cross cultural environment.

19. FEDERALLY EXCLUDED INDIVIDUALS AND ENTITIES

Employees of MARIPOSA or COUNTY who, because of convictions or because of current or past failures to comply with federal program requirements, become designated as ineligible persons or are identified for exclusion from involvement in federal programs, shall be removed from responsibility or participation in or involvement with all aspects of this federally funded program, until such time as the person or entity is no longer identified on the exclusion lists.

Both parties shall be responsible to perform ongoing exclusion reviews of current employees to ensure that neither party hires or contracts with any individual or entity under sanction or exclusion by the federal government. Both parties agree to provide written certification under penalty of perjury that no current employee, subcontractor, entity or agent is on the list of Excluded Individuals and Entities of the Office of the Inspector General (U.S. Department of Health and Human Services) or the General Services Administration's Excluded Parties Listing System (42 USC 1320). Failure to comply shall lead to contract termination.

20. QUALITY OF SERVICE

MARIPOSA and COUNTY shall perform these services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by each profession.
MARIPOSA and COUNTY shall comply with all applicable Federal, State, and Local laws, ordinances, codes, and regulations in performing its services.

21. PERSONAL SATISFACTION AS A CONDITION PRECEDENT

The obligations of MARIPOSA as provided in this Agreement are expressly conditioned upon MARIPOSA's compliance with the provisions of the contract to the personal satisfaction of COUNTY. COUNTY shall determine compliance in good faith and as a reasonable person would under the circumstances.

22. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties thereunder and hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by COUNTY and counsel for COUNTY.

Notwithstanding any other provisions of this Agreement, any dispute concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

MARIPOSA and COUNTY shall adhere to Title XIX of the Social Security Act and conform to all applicable Federal and State statutes and regulations.

23. ENTIRE AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

24. COUNTY NOT OBLIGATED TO THIRD PARTIES

COUNTY shall not be obligated or liable hereunder to any party other than MARIPOSA.

25. STANDARDS OF PRACTICE

Standards of practice of COUNTY and MARIPOSA shall be determined by the professional standards for the employees and officers of COUNTY and MARIPOSA in their trade or field of expertise.
Each party represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and ensure a workplace free of sexual harassment pursuant to Government Code 12950; and regulations and guidelines issued pursuant thereto.

Each party agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

COUNTY shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have Agreements.

Notwithstanding other provisions of the section, COUNTY and MARIPOSA shall 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.

30. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

31. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected.

32. LICENSE AND PERMITS

MARIPOSA and COUNTY shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
33. LICENSES

MARIPOSA and COUNTY physicians shall have in effect and shall maintain appropriate licensure during the term of this Agreement. All inpatient sub-contractors will maintain necessary licensing and certification per Welfare & Institution Code (W & I) Section 5778 (n).

34. RECORDS

Both parties agree to extend to the COUNTY's Director of Mental Health Department, and MARIPOSA County Mental Health Director, or designees, and the State Department of Health Care Services, or their designees, the right to review records, in regard to MARIPOSA consumers placed in COUNTY's facilities, in order to ensure compliance with the terms and conditions of this Agreement.

Both parties shall maintain statistical records in the manner provided by the State Health and Welfare Agency and shall make such records available to either party as required by the COUNTY's Director, MARIPOSA County Mental Health Director, the California State Health Department, and the California State Health and Welfare Agency.

Both parties shall grant to each other, the State of California, Auditor General, (if applicable) the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers and records of MARIPOSA and COUNTY which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, transactions, program compliance and consumer complaints. MARIPOSA and COUNTY must retain all such required records for five (5) years after MARIPOSA makes final payment and all other pending matters are closed.

Clinical records of each consumer shall be the property of COUNTY's Mental Health Department and shall be maintained for seven (7) years or until audit findings are resolved, whichever occurs later. All such records shall be considered confidential consumer records in accordance with California Welfare and Institutions Code, Section 5328, and the Code of Federal Regulations, Section 205.50, regarding confidentiality of consumers. Clinical records shall include evaluative studies and sufficient detail to make possible an evaluation by the Mental Health Director of MARIPOSA, or designee, and shall be kept in accordance with the rules and regulations of the State of California Community Mental Health Services Act of 1967, as amended.
Review as provided by this section and by these parties or agencies shall otherwise conform to all appropriate confidentiality statutes.

35. REPORTS AND INFORMATION

To the extent permitted by law, COUNTY shall furnish MARIPOSA reports as MARIPOSA may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by MARIPOSA.

36. BREACH OF CONTRACT

Upon breach of this Agreement by MARIPOSA the COUNTY shall have all remedies available both in equity and/or law necessary to recover and satisfy MARIPOSA obligations.

37. CONFLICT OF INTEREST

Each party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Each party shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the other party. Each party shall make all reasonable efforts to ensure that no officer or employee, whose position in their county enables them to influence this Agreement, shall have any direct or indirect financial interest resulting from this Agreement or shall have any relationship to the other county or to an officer or employee of the other county, nor that any such person will be employed by other than their original county of employment in the performance of this Agreement without immediate divulgence of such fact to parties.

38. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

COUNTY OF MERCED
A Political Subdivision of the State of California

By
Chairman, Board of Supervisors

COUNTY OF MARIPOSA
A Political Subdivision of the State of California

By
Chair, Board of Supervisors

Date JUN 0 7 2016

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL
APPROVED AS TO LEGAL FORM:
JAMES N. FINCHER
MERCESD COUNTY COUNSEL

By_________________________
Deputy Forrest W. Hansen

RECOMMENDED FOR APPROVAL
MERCESD COUNTY MENTAL HEALTH

By_________________________
Yvonna Brown, MSW, Director

Budget Unit: 41500
Expenditure Account: 96828
Mode of Service: 05
Service Function: 20
Provider #2415
Legal Entity # 00024
HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability Accountability Act (hereafter referred to as "HIPAA") Business Associate Addendum supplements and is made a part of the parties underlying Agreement (Contract No.: ) by and between Merced County and the other contracting party (referred to hereafter as "Business Associate").

Business Associate shall comply with, and assist the County in complying with, the privacy and security requirements of HIPAA, codified at Title 42 USC 1320d et. seq., and its implementing regulations, including but not limited to Title 45 CFR, Parts 160 and 164, as amended from time to time, hereinafter collectively referred to as the “Privacy Rule” or “Security Rule” as appropriate. Terms used but not otherwise defined in this Addendum shall have the same meaning as those terms that are used in the Privacy Rule and Security Rule.

1. Use and Disclosure of Protected Health Information:

   a. Except as otherwise provided in this Addendum, Business Associate may use or disclose HIPAA protected health information (hereafter referred to as “PHI”) or electronic protected health information (hereinafter referred to as “E PHI”) to perform functions, activities or services for or on behalf of the County, as specified in this Addendum, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the County or the minimum necessary policies and procedures of the County component.

   b. Except as otherwise limited in this Addendum, Business Associate may use and disclose PHI/E PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such disclosures are required by law or Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that such PHI/E PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and that such person or entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

   c. Except as otherwise limited by this Addendum, Business Associate may access PHI/ E PHI to provide data aggregation services related to the health care operation of the County without disclosure of confidential information of individuals.

2. Safeguard of PHI/E PHI:

   a. Business Associate shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI/E PHI not provided for by this Addendum, the Privacy Rule, or the Security Rule.

   b. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of E PHI that it creates, receives, maintains, or transmits on behalf of the County health care component as required by the HIPAA Security Rule.
3. Unauthorized Use or Disclosure of PHI/EPHI:

Business Associate shall report to the County health care component any use or disclosure of PHI/EPHI not provided for by this Addendum, the Privacy Rule or the Security Rule.

4. Mitigation of Disallowed Uses and Disclosures:

Business Associate shall mitigate, to the extent practicable, any harmful effects that are known to the Business Associate of a use or disclosure of PHI/EPHI by the Business Associate in violation of the requirements of this Addendum, the Privacy Rule or the Security Rule.

5. Agents and Subcontractors of the Business Associate:

Business Associate shall ensure that any agent, including but not limited to a subcontractor, to which the Business Associate provides PHI/EPHI either created or received by the Business Associate from or on behalf of the County health care component, shall comply with the same restrictions and conditions of this Addendum, the Privacy Rule, and the Security Rule.

6. Access to PHI/EPHI:

Business Associate shall provide access to any PHI/EPHI maintained by the Business Associate on behalf of the County health care component at the request of, and in a time and manner reasonably designated by the County health care component. The Business Associate shall also provide access to PHI/EPHI in accordance with the terms of the contractual Agreement hereunder in order for the County component to meet the requirements of the Privacy Rule and 45 CFR 164.524.

7. Amendment(s) to PHI and Addendum:

a. Business Associate shall make any amendment(s) to PHI/EPHI that the County health care component directs or at the request of the County, and in a time and manner designated by the County component in accordance with the Privacy Rule and 45 CFR 164.526.

b. Notwithstanding any provision to the contrary in the parties Agreement or this Addendum, the County health care component may amend this Addendum by providing ten (10) day prior written notice to Business Associate in order to maintain compliance with the Privacy Rule. Such amendment(s) shall be binding on the Business Associate at the end of the ten (10) day period and shall not require the further consent of the Business Associate. Business Associate may elect to discontinue the parties Agreement within the ten (10) day period, but the Business Associate’s duties hereunder to maintain the security and privacy of PHI shall survive such discontinuance or termination. County component and Business Associate may otherwise amend this Addendum by mutual written consent.

8. Documentation of Uses and Disclosures:

Business Associate shall document all disclosures of PHI/EPHI and information related to such disclosures in a manner as would be required for the County health care component to respond to a request by an individual for an accounting of disclosures of PHI/EPHI in accordance with the Privacy Rule and 45 CFR 164.528.
9. **Accounting of Disclosures:**

Business Associate shall provide to the County health care component, in the time and manner reasonably designated by the County component, information collected in accordance with 45 CFR 164.528 and the Privacy Rule, to permit the County to respond to a request by an individual for an accounting of disclosures of PHI/EPHI pursuant to the Privacy Rule and 45 CFR 164.528.

10. **Records Available to the County and the Secretary of HHS:**

Business Associate shall make its internal practices and records related to the use, disclosure, and privacy protection of PHI/EPHI received from the County health care component, or created or received by the Business Associate on behalf of the County component, available to the County or to the Secretary of the Health and Human Services ("HHS") for purposes of the Secretary of HHS in determining the County's compliance with the Privacy Rule and Security Rule in the time and manner reasonably designated by the County or the Secretary of HHS.

11. **Federal Health Care Exclusion:**

Business Associate shall provide to the County health care component written certification that no employee, subcontractor or agent of the Business Associate is on the list of Federal Health Care Excluded Individuals/Entities.

12. **Transfer or Destruction of Information on Contract Termination:**

Prior to or at the time of termination, for any reason, of the parties contractual Agreement with this Addendum, Business Associate with agreement of COUNTY shall elect to comply with one of the following procedures.

   a. Business Associate shall transfer or return to the County health care component all PHI/EPHI records and information that were either received from the County component or were created or received by the Business Associate on behalf of the County component. No copies of PHI/EPHI arising from this agreement may be kept. This provision applies to relative PHI/EPHI in the possession of employees, subcontractors or agents of the Business Associate. The PHI/EPHI and any related information created or received from or on behalf of the County component are and shall remain the property of the County. Business Associate agrees that it acquires no title in or rights to the information, including any de-identified information.

   b. Business Associate shall destroy all PHI/EPHI received from the County health care component, or created or received by the Business Associate on behalf of the County component. This provision shall apply to PHI/EPHI in possession of subcontractors or agents of the Business Associate. Business Associate, its employees, agents or subcontractors shall retain no copies of PHI/EPHI records or information.

   c. In the event that the Business Associate determines that neither transferring nor destroying such PHI/EPHI records or information is legally feasible, Business Associate shall provide the County health care component notification of the conditions that make transfer or destruction infeasible. Upon mutual agreement of the parties that transfer or destruction of the PHI/EPHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI/EPHI and limit as required by the Privacy Rule or Security Rule any further use or disclosures of such PHI/EPHI for so long as Business Associate, its successors, employees, agents or subcontractors, maintains such PHI/EPHI. Business Associate's obligation to maintain the security and privacy of such PHI/EPHI shall survive the termination of the parties Agreement and this Addendum.
13. Material Breach and Termination:

Notwithstanding any other provision in the parties contractual Agreement hereunder, and this Addendum, if the County health care component becomes aware of a pattern of activity(s) that violates this Addendum, the Privacy Rule or the Security Rule by the Business Associate, its employees, agents or subcontractors, and reasonable steps to cure the violation(s) within thirty (30) days from the mailing of the written notice by the County to cure the violation(s) is unsuccessful, then the County will terminate the parties Agreement and this Addendum, or if not feasible; report the violation(s) to the Secretary of the Health and Human Services. COUNTY at any time may exercise all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI/EPHI by the Business Associate, by any Business Associate employees, agents or subcontractors, or by any third party who has received PHI/EPHI from the Business Associate.

14. Indemnification and Hold Harmless:

Business Associate shall defend, indemnify and hold harmless the County and its respective employees and agents from and against any and all losses, costs, claims, damages, penalties, fines, liabilities, legal actions, judgments and expenses of every kind, including but not limited to reasonable attorney’s fees, asserted or imposed against the County, or its employees or agents, arising out of the acts or omissions of Business Associate or any of its employees, agents or subcontractors related to the performance or non performance of this Addendum and compliance with the Privacy Rule and Security Rule.

15. Interpretation:

Any ambiguity in this Addendum shall be resolved to permit the County to comply with the Privacy Rule and Security Rule. There shall be no legal construction of this Addendum, its provisions or language against its drafter. If any provision of this Addendum is deemed by the court of proper jurisdiction to be illegal or unenforceable by law, all other remaining provisions and the parties intent under this Addendum are to be given full legal effect so as to further the protections of the private medical information under the Privacy Rule and Security Rule.

16. HITECH Act requirements in Chapter 156 of Title 42 of the United States Code apply to all Business Associate agreements and all Personal Health Information transfers, handling, storage and protection. Specific requirements for notification and for publication concerning improperly released information are in effect as of February 17, 2010. A business associate receiving any personal health information now has specific responsibilities for correct handling and for notice of any breach of security concerning personal health information.

Business Associate is responsible for compliance with the provisions of the HITECH Act which is presently Chapter 156 of Title 42 of the United States Code. Chapter 156 includes sections 17921 through 17953. Business Associate is now subject to the confidentiality requirements imposed upon covered entities and shall be responsible for the safe and secure handling of Personal Health Information (PHI) and specifically for secure protection of electronic and recorded records of PHI. Notice by the Business Associate to individuals whose records may have been compromised by a breach of security is required. Notice shall be by first class mail where possible, appropriate posting of information concerning the breach when contact cannot be made and, when involving 500 or more individuals, direct reporting to the Department of Health and Human Services.
DEPARTMENT OF MENTAL HEALTH

Service and Payment Authorization Form

I authorize the admission of (patient’s name) ________________________________

a __________________________ County resident for psychiatric hospitalization at Marie Green
Psychiatric Center located at 300 E. 15th Street in Merced, California.

__________________________ County will be responsible for the following:

1) Transportation of the patient to and from Marie Green Psychiatric Center.
2) Payment of Services rendered to the client at the rate of $1,072.00 per client per day plus $160.80 per client per day Administrative Overhead costs during the period of July 1, 2016 to June 30, 2017.
3) If the Client has Medi-Cal, placing County will be responsible to cover all charges not reimbursed by the State or other payer source.
4) Placement of patient post discharge.
5) Provision of at least one guard if necessary.
6) Ensure that all medications are sent with patient and/or reimburse the cost of any medical medication ordered or provided during the patient’s stay at Marie Green Psychiatric Center.
7) Payment of $76 for History and Physical, if ordered by the attending psychiatrist.

☐ Authorization Approved ☐ Authorization Denied

By: ________________________________ ________________________________ County
(Please Print)

Signature: ________________________________

Please provide reason(s) if authorization is denied.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Document completed by: ________________________________

MCDMH Staff

Revised September 2015