RESOLUTION - ACTION REQUESTED 2017-480

MEETING:    July 18, 2017

TO:         The Board of Supervisors

FROM:       Chevon Kothari, Human Services Director

RE:         Agreement with Bakersfield Behavioral Healthcare Hospital to Provide Inpatient Services

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Bakersfield Behavioral Healthcare Hospital to provide inpatient mental health rehabilitation services for Mariposa County Behavioral Health in an amount not to exceed $40,000; and authorize the Board of Supervisors Chair to sign the Agreement.

The County does not operate inpatient mental health rehabilitation facilities and therefore contracts for such placements. Multiple contracts are necessary to meet the potential need for mental health emergency services because beds are in short supply throughout California. If the County limits the number of contracts, there would likely come a time that someone were in danger to themselves or others, and no bed space would be available.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The most recent agreement was approved by the Board on June 14, 2016, by Resolution 2016-280.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this contract is not approved, Behavioral Health crisis response workers may have greater difficulty in placing clients who require emergency psychiatric hospitalization.

FINANCIAL IMPACT:
This contract will continue to be paid within the Behavioral Health budget unit. The cost will not exceed the daily inpatient rate of $916 as stated in Exhibit B of the contract. There is no impact to the County General Fund.

ATTACHMENTS:
Bakers BH Agreement 2018 - Wcsignature (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Miles Menetrey, District V Supervisor
AYES: Rosemarie Smallcombe, Marshall Long, Kevin Cann, Miles Menetrey
EXCUSED: Merlin Jones
AGREEMENT FOR PSYCHIATRIC INPATIENT SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 20th day of June, 2017 by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Bakersfield Behavioral Healthcare Hospital, ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on July 1, 2017 and terminate on June 30, 2018 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform psychiatric inpatient services as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $40,000. The Contractor's hourly rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL); Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

Last revised 5/17
(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $2,000,000 per accident for bodily injury or disease.

(4) Professional Liability (Errors and Omissions) insurance appropriate to the Contractor's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay.
losses and related investigations, claim administration, and defense expenses within the retention.

6. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

7. Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

9. Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify Entity its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from Entity's sole negligence or willful acts.

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of
Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. **STATE AND FEDERAL TAXES**

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor’s payments;
b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
c. County will not withhold state or federal income tax from payment to Contractor;
d. County will not make disability insurance contributions on behalf of Contractor;
e. County will not obtain workers’ compensation insurance on behalf of Contractor.

9. **ASSIGNMENT**

It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

10. **NOTICE**

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**  
Bakersfield Behavioral HealthCare Hospital  
5201 White Lane  
Bakersfield, CA 93309

**COUNTY:**  
County of Mariposa  
5362 Lemee Lane  
P.O. Box 99  
Mariposa, CA 95338  
Fax: (209) 742-0996

11. **COMPLIANCE**

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.
12. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and Mariposa County Human Services Department. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 30 calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.
17. **DISPUTES**

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. **CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. **NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

20. **MANDATORY AND PERMISSIVE**

“Shall” is mandatory. “May” is permissive.

21. **SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. **COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

23. **OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. **CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.
25. Authority

Each party and each party’s signatory warrant and represent that each has full authority and
capacity to enter into this Agreement in accordance with all requirements of law. The parties
also warrant that any signed amendment or modification to the agreement shall comply with all
requirements of law, including capacity and authority to amend or modify the Agreement.

26. Negotiated Agreement

This Agreement has been arrived at through negotiation between the parties. Neither party is to
be deemed the party which prepared this Agreement within the meaning of California Civil Code
section 1654. Each party represents and warrants that in executing this Agreement it does so
with full knowledge of the rights and duties it may have with respect to the other party. Each
party also warrants and represents that it has received independent legal advice from its attorney
with respect to the matters set forth in this Agreement and the rights and duties arising out of this
Agreement, or that such party willingly foregoes any such consultation.

27. No Reliance on Representations

Each party warrants and represents that it is not relying and has not relied upon any
representation or statement made by the other party with respect to the facts involved or its rights
or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to
this Agreement, have been independently verified. Each party further understands that it is
responsible for verifying the representations of law or fact provided by the other party.

28. Warranty

County has relied upon the professional ability and training of Contractor as a material
inducement to enter into this Agreement. Contractor hereby warrants that all work shall be
performed in accordance with generally accepted professional practices and standards as well as
the requirements of applicable federal, state and local laws, it being understood that acceptance
of Contractor’s work by County shall not operate as a waiver or release.

29. Funding Availability

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent
fiscal years covered under this Agreement does not appropriate sufficient funds for this
Agreement, this Agreement shall be of no further force and effect. In this event, the County shall
have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations
under this Agreement and Contractor shall not be obligated to perform any provisions of this
Agreement. Contractor’s assumption of risk of possible non-appropriation is part of the
consideration for this Agreement. County budget decisions are subject to the discretion of the
Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this
Agreement, the County shall have the option to either cancel this Agreement with no liability
occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced
amount.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA

Marshall Long, Chair
Board of Supervisors

CONTRACTOR

[Signature]

[Title]

ATTEST:

[Signature]

Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:

[Signature]

Steven W. Dahlem
County Counsel
Exhibit A

SCOPE OF WORK

CONTRACTOR shall provide psychiatric inpatient services to COUNTY beneficiaries who are authorized for services by COUNTY.

Services shall be provided to beneficiaries of COUNTY in a manner prescribed by the laws of the State of California and in accordance with the rules and regulations of relevant Federal regulations.

All personnel rendering services shall be employed by or under contract with the CONTRACTOR. They shall be members of CONTRACTOR inpatient professional staff. The services shall be provided under the direction of the CONTRACTOR facility Director and shall meet appropriate professional standards.

CONTRACTOR shall notify COUNTY of the proposed discharge date of all persons served under this Agreement.

In a timely manner and as mutually agreed upon, the CONTRACTOR shall provide to the COUNTY "Case Progress Summarization Notes" and a copy of the Discharge Summary for each client. Prior to discharge, the CONTRACTOR shall contact the COUNTY's assigned Hospital Liaison for coordination and consultation purposes. Client records shall include enough information for an evaluation of services provided.

CONTRACTOR agrees to the extent required by 42 U.S.C. 1171 et seq., Health Insurance Portability and Accountability Act of 1996 (HIPAA), to comply with applicable requirements of law and subsequent amendments relating to protected health information, as well as any task or activity contractor performs on behalf of County, to the extent County would be required to comply with such requirements.
Exhibit B
COST PROPOSAL

CONTRACTOR rates for the fiscal year 2017-2018 are as follows: Nine Hundred Sixteen Dollars per client per day ($916.00 per day). This rate may fluctuate up to 10% based on the state approved rate in effect on the date of service. The total amount is not to exceed $40,000.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Commercial Lines - 213-253-6700
Wells Fargo Insurance Services, Inc. - CA Lic#: 608408
333 S. Grand
Los Angeles, CA 90071

INSURED
Bakersfield Behavioral Healthcare Hospital, LLC
5201 White Lane
Bakersfield, CA 93309

CONTACT
NAME: [Redacted]
PHONE: [Redacted]
FAX: [Redacted]
E-MAIL: [Redacted]

INSURER(S) AFFORDING COVERAGE
NAIC #: [Redacted]

INSURER A: Coverys Specialty Insurance Company 15686
INSURER B: Travelers Specialty Casualty Co of America 25674
INSURER C: [Redacted]
INSURER D: [Redacted]
INSURER E: [Redacted]

CERTIFICATE NUMBER: 11971768
REVISION NUMBER: See below

COVERAGE:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 161): Additional Remarks Schedule, may be attached if more space is required.

Mariposa County Human Services, the county, its officers, employees and volunteers are named as additional insured as it relates to General Liability & Auto and Waiver of Our Rights to Recover as it relates to Workers Compensation in accordance with the term and conditions of the policy.

CERTIFICATE HOLDER
Mariposa County Human Resources Department
P.O. Box 99
Mariposa, CA 95338

CANCELLED BY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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