

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Behavioral Health And Recovery Services

BOARD AGENDA # \*B-8

Urgent

Routine

AGENDA DATE September 30, 2014

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval to Select and Award, as a Result of a Request for Proposals Process, an Independent Contractor Agreement to ABM Onsite Services - West, Inc. for the Provision of Building Maintenance Services at the Stanislaus County's Psychiatric Health Facility

STAFF RECOMMENDATIONS:

1. Approve the selection and award of an independent contractor agreement for building maintenance services to ABM Onsite Services - West, Inc. of San Francisco, California, as a result of a Request for Proposals process for building maintenance services for the County's Psychiatric Health Facility located at 1904 Richland Avenue, Ceres, California.
2. Authorize the Behavioral Health Director, or her designee, to sign the independent contractor agreement, and any amendments thereto, with ABM Onsite Services - West, Inc. to provide building maintenance services for the Stanislaus Psychiatric Health Facility located at 1904 Richland Avenue, Ceres, California.

FISCAL IMPACT:

The term of the proposed agreement with ABM Onsite Services - West, Inc. is October 1, 2014 through June 30, 2017. The amount of the contract will not exceed \$605,000 for the term of the contract. The contract is included in Behavioral Health & Recovery Services (BHRS) budget for Fiscal Year 2014-2015 in the amount of \$165,000, which is 75% of the annual expense of \$220,000.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2014-501

On motion of Supervisor Monteith, Seconded by Supervisor Withrow  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST:

Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Select and Award, as a Result of a Request for Proposals Process, an Independent Contractor Agreement to ABM Onsite Services – West, Inc. for the Provision of Building Maintenance Services at the Stanislaus County’s Psychiatric Health Facility

Page 2

**FISCAL IMPACT (Continued):**

The amount of \$220,000 per year will be included in the Department’s Proposed Budget submission for Fiscal Years 2015-2016 and 2016-2017, funded from departmental revenue. Approval of the recommended agreement will have no impact to the County General Fund.

Fiscal Year	Building Maintenance Services	Mileage Reimbursement	Overtime	Total Amount
10/01/14-06/30/15	\$120,719	\$450	\$43,831	\$165,000
07/01/15-06/30/16	\$164,982	\$600	\$54,418	\$220,000
07/01/16-06/30/17	\$169,107	\$600	\$50,293	\$220,000
<b>Total Contract Maximum Amount</b>	<b>\$454,808</b>	<b>\$1,650</b>	<b>\$148,542</b>	<b>\$605,000</b>

**DISCUSSION:**

The County owns property at 1904 Richland Avenue in Ceres, California that is commonly known as the Stanislaus Recovery Center (SRC). There are several buildings located on the SRC Campus. One building houses the Adult Treatment Program, a residential Alcohol and Other Drug facility which operates twenty-four (24) hours a day, seven (7) days a week. This 30,000 square feet building is approximately 30-35 years in age.

Another building was recently renovated and in March, 2014, opened as a 16-bed Psychiatric Health Facility (PHF) which also operates twenty-four hours a day, seven (7) days a week. The PHF is an intensive secure residential psychiatric treatment facility that does not provide related medical care. Also located on the SRC campus are the County’s Prevention Early Intervention (PEI) office; the County’s Community Emergency Response Team (CERT) office and the County’s two-story storage facility.

In Stanislaus County, building maintenance services are provided by County employees as defined in Public Contract Code Section 22002. The SRC Campus is the only exception to this practice, which is justified by the level of service required of the 24-hour daily operations of the two residential programs operated at that location. Building maintenance services at the SRC campus are currently provided by ABM Onsite Services – West, Inc. by contract dated July 1, 2012 through September 30, 2014 as amended. In anticipation of the expiration of this contract and to comply with County procurement rules, BHRS and the General Services Agency (GSA) Purchasing Division issued Request for Proposal 14-23 MP Building Maintenance Services for Psychiatric Health Facility.

Approval to Select and Award, as a Result of a Request for Proposals Process, an Independent Contractor Agreement to ABM Onsite Services – West, Inc. for the Provision of Building Maintenance Services at the Stanislaus County’s Psychiatric Health Facility  
 Page 3

The RFP was issued on May 8, 2014 and sent electronically to over 400 vendors, 23 of which downloaded the RFP. A non-mandatory pre-bid walk was held on May 29, 2014 and four vendors were in attendance. The RFP closed on July 16, 2014 and GSA received complete responses from the three vendors listed below.

- ABM Onsite Services – West, Inc., of San Francisco, California;
- Kitchell/CEM, Inc., of Sacramento, California; and
- PRIDE Industries One, Inc. of Roseville, California.

All of the proposers met the minimum qualifications set forth in Phase I of the Evaluation Phase, which included a financial review. A committee of three evaluators was selected to further evaluate the proposals. The Evaluation Committee was comprised of representatives from the County’s Behavioral Health & Recovery Services.

The Evaluation Committee completed Phase II, which consisted of a review and evaluation of each proposer’s qualification proposal. Proposers needed to score at least 75 of the 100 available points in order to pass on to Phase III. The scores of each member of the Evaluation Committee were averaged to determine the actual Phase II score for each finalist. Two of the proposers scored above 75 and passed on to Phase III. On August 11, 2014 GSA issued a Notice of Non-Award to PRIDE Industries One, Inc., and no letter of protest was received during the five-day protest period of the RFP process.

In Phase III, the pricing proposals submitted by each proposer were evaluated by GSA. Pricing was evaluated based upon a weighted average, with the lowest price assigned 100% of the 100 points possible.

In Phase IV, references checks were conducted, with a total of 35 points available. The scores of each member of the Evaluation Committee were averaged to determine the actual score for each proposer. Interviews and oral presentations were conducted in Phase V, with a total of 65 points available. The scores of each member of the Evaluation Committee were averaged to determine the actual score for each finalist.

	Total Available	ABM	Kitchell	Pride
Phase II*	100	90	93	74
Phase III	100	100	43	n/a
Phase IV	35	33	31	n/a
Phase V	65	63	64	n/a
TOTAL:	300	286	231	n/a

*\*Need 75 of 100 points to pass*

Approval to Select and Award, as a Result of a Request for Proposals Process, an Independent Contractor Agreement to ABM Onsite Services – West, Inc. for the Provision of Building Maintenance Services at the Stanislaus County’s Psychiatric Health Facility  
 Page 4

As shown in the table above, the two scores of the two finalists were very close except for pricing. For this reason, the Evaluation Committee elected to provide proposers with an opportunity to provide a "Best and Final Offer" (BAFO). This optional step in the procurement process is used in situations where no single proposal addresses all the specifications; when the costs submitted by all Proposers are too high or too disparate for comparison; when two or more Proposers are virtually tied after the evaluation process, when all Proposers submitted responses that are unclear or deficient in one or more areas; or when there are two equally attractive proposals that are difficult to differentiate.

GSA prepared the BAFO document which simply required annual pricing for building maintenance services, an hourly rate for pre-approved overtime and the monthly charge for minimal vehicle use (e.g., 50 miles per month). Both proposers responded, and BAFO pricing was evaluated based upon a weighted average, with the lowest price assigned 100% of the 100 points possible.

The award of the contract was made to the vendor whose proposal best met the criteria set forth in the RFP and provides the best value to the County, with price and all other factors considered. The Evaluation Committee made this determination by adding the scores from Phases II through V for both proposers, with Phase III updated to reflect the BAFO pricing. The final scores are as follows:

	Total Available	ABM	Kitchell	Pride
Phase II*	100	90	93	74
Phase III	100	100	61	n/a
Phase IV	35	33	31	n/a
Phase V	65	63	64	n/a
TOTAL:	300	286	249	n/a

\* Needed 75 of 100 points to pass

As shown above, ABM Onsite Services – West, Inc. (ABM) received the highest score of 286 of a possible 300 points. On September 2, 2014 GSA issued a Notice of Intended Award to ABM and a Notice of Non-Award to the other proposer. No letter of protest was received during the five-day protest period of the RFP process.

The proposed agreement with ABM has a term beginning on October 1, 2014 and ending June 30, 2017, with two optional one-year renewal terms.

Approval to Select and Award, as a Result of a Request for Proposals Process, an Independent Contractor Agreement to ABM Onsite Services – West, Inc. for the Provision of Building Maintenance Services at the Stanislaus County’s Psychiatric Health Facility

Page 5

**POLICY ISSUE:**

Approval of these requests supports the Board of Supervisors’ priority of Effective Partnerships and Efficient Delivery of Public Services by contracting with a community provider to deliver the needed services at an appropriate level of service in a cost effective manner.

**STAFFING IMPACT:**

Existing BHRS staff is available to manage the ABM Onsite Services – West, Inc. contract.

**CONTACT PERSON:**

Madelyn Schlaepfer, Ph.D., Behavioral Health Director (209) 525-6225

**AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and ABM Onsite Services – West, Inc., a Delaware Corporation authorized to do business in California ("Contractor"), effective the date of the last signature.

**Recitals**

WHEREAS, the County has a need for services involving building maintenance services at County's Psychiatric Health Facility; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services; and

WHEREAS, Contractor was awarded this agreement as a result of Request for Proposal (RFP) #14-23 MP.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

**1. Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

**2. Consideration**

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of

remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

### 3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

### 4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall include County, its Officers, Directors, Officials, Agents, Employees and volunteers as Additional Insureds under the General Liability and Auto policy and shall supply specific endorsements for same. The Additional Insured endorsement under the General Liability policy will be the



Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization ISO Form CG2010 with the current applicable revision date. The Additional Insured endorsement under the Auto Liability will be “where required by written contract”. All Insurance policies will include a Waiver of Subrogation in favor of County.

6.4 The Contractor's insurance coverage shall be primary insurance regarding County and County's officers, officials and employees. Any insurance or self-insurance maintained by County or County's officers, officials and employees shall be excess of Contractor's insurance and shall not contribute with Contractor's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its officers, directors, officials, agents, employees and volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Any available insurance proceeds in excess of the specified minimum limits required by this Agreement shall be available to County for defense and damages. The indemnity and insurance sections are stand alone and not dependent on each other for coverage limits

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-:VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and

Contractor's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

11.1. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's non-discrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

11.2 Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11.3 Contractor shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Contractor's delivery of services.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County:

Stanislaus County  
Behavioral Health & Recovery Services  
Attention: Contract Manager  
800 Scenic Drive, Building 4  
Modesto, CA 95350

Stanislaus County Purchasing Agent  
1010 10<sup>th</sup> Street, Suite 5400  
Modesto, CA 95354

To Contractor:

ABM Onsite Services – West, Inc.  
Attention: Engineering Coordinator  
600 Harrison Street, Suite 600  
San Francisco, CA 94107

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same

formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

(SIGNATURES SET FORTH ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the date(s) shown below.

**COUNTY OF STANISLAUS**

**ABM ONSITE SERVICES – WEST, INC.**

By: Madelyn Schlaepfer 10/1/2014  
Madelyn Schlaepfer, Ph.D., CEAP Date  
Behavioral Health Director

By: \_\_\_\_\_ Date  
Rene' Jacobsen  
Executive Vice President

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By: Marc Hartley  
Marc Hartley  
Deputy County Counsel

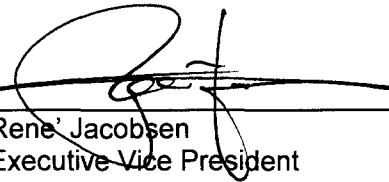
BOS Action Item: 2014-501, September 30, 2014

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the date(s) shown below.

**COUNTY OF STANISLAUS**

**ABM ONSITE SERVICES – WEST, INC.**

By: \_\_\_\_\_  
Madelyn Schlaepfer, Ph.D., CEAP      Date  
Behavioral Health Director

By:  \_\_\_\_\_ 9/24/14  
Rene Jacobsen      Date  
Executive Vice President

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By: \_\_\_\_\_  
Marc Hartley  
Deputy County Counsel

BOS Action Item: 2014-501 \_\_\_\_\_, September 30, 2014

**A. SCOPE OF WORK**

The Contractor shall provide services under this Agreement as follows:

1. Contractor shall provide skilled labor to perform routine and preventative maintenance at County's psychiatric health facility and surrounding campus located in Ceres. In keeping with Public Contract Code Section 22002, "maintenance work" shall include and be limited to routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes;
2. Specifically excluded from this Scope of Work are:
  - a. Tasks or projects that would qualify as "public projects" as that term is defined in Public Contract Code Section 22002. Should the Contractor determine such projects are needed, Contractor shall consult with County.
  - b. Locksmith services, including hardware, emergency egress etc. These services are provided through the Facilities Maintenance Division of County's General Services Agency (FMD). Should the Contractor determine such services are needed, Contractor shall contact County's FMD at (209) 525-7524.
3. Contractor's assigned staff shall provide the following services:
  - a. Review invoices generated by SRC engineering department, contracted work, parts, and supplies.
  - b. Resolve complaints related to engineering.
  - c. Meet with Fire Marshall during scheduled and unscheduled inspections.
  - d. Communicate with Fire Marshall any resolutions for site deficiencies.
  - e. Submit requests for supplies as needed to appropriate County staff.
  - f. Serve as Site Coordinator to County's Master Contractors providing repair, maintenance services, garbage collection, linen services, and pest control.
  - g. Provide problem-solving activities in areas related to engineering and grounds maintenance.
  - h. Complete the tasks listed below in accordance with designated frequency:

Frequency	Tasks
*Daily	<ul style="list-style-type: none"> <li>• Conduct Equipment Rounds (checking pressures, temps and operation of mechanical equipment) and update log</li> <li>• Complete and maintain all appropriate logs on morning equipment rounds and on preventative maintenance schedule of equipment, giving priority to priority work orders and</li> <li>• Complete preventative maintenance of equipment as needed and maintain Preventive Maintenance Log.</li> <li>• Complete unit rounds on all buildings to check for safety issues and damage caused by County's clients the previous evening.</li> <li>• Maintain Key Control Log</li> <li>• Pick up Work Orders during unit rounds and maintain Work Order Request Log</li> </ul>



	<ul style="list-style-type: none"> <li>• Conduct and document safety check on patient equipment as needed;</li> <li>• Inspect and report all hazardous conditions.</li> </ul>
*Bi-Monthly	<ul style="list-style-type: none"> <li>• Perform Clinical, Security, and Engineering Environmental rounds for deficiencies.</li> </ul>
*Monthly	<ul style="list-style-type: none"> <li>• Review and maintain preventative maintenance manuals.</li> <li>• Conduct and document fire extinguisher checks.</li> <li>• Conduct and document fire door checks.</li> <li>• Review and update fire drill life safety documents.</li> </ul>
*Quarterly	<ul style="list-style-type: none"> <li>• Review and update as needed Utilities Management Plan documents.</li> <li>• Review and update as needed Fire protection system documents.</li> <li>• Review and update as needed Safety Data Sheets documents.</li> </ul>
*Semi-Annually	<ul style="list-style-type: none"> <li>• Conduct and document disaster preparedness drills.</li> <li>• Conduct and document Code 911 drills.</li> <li>• Conduct equipment test &amp; inspections; maintain log of same.</li> </ul>
*Annually	<ul style="list-style-type: none"> <li>• Conduct fire system test and inspection of all devices and systems; maintain log of same.</li> </ul>
*As needed:	<ul style="list-style-type: none"> <li>• Regulatory tests and system checks as directed by the County's Project Manager</li> </ul>

*\*Above-referenced frequencies are subject to change as required by regulatory changes*

Service hours are as follows:

Standard Service	Monday – Friday 7:30 a.m. to 4:30 p.m.
Overtime Service	Monday – Friday 3:00 p.m. to 6:30 a.m.
Emergency Service	Saturday, Sunday & Holidays 12:00 a.m. to 11:59 p.m.

*\*Service hours are subject to change.*

4. Overtime and holiday pay shall only be paid if approved by County in advance via email exchange between the parties' respective representatives. With respect to overtime, the successful proposer shall manage staffing and schedules so as to eliminate the need for overtime work/charges to the extent possible. Pre-approved overtime shall be paid by County at one and half (1.5) times the Hourly Rates shown above for hours worked in excess of eight (8) hours per day (the "Overtime Rate"). With respect to holiday pay, Contractor's staff may be paid the Overtime Rate for work approved in advance by County and performed on any of the following six holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
5. Contractor shall assign two maintenance staff to provide service under the contract resultant from this RFP. Each shall be capable, experienced, appropriately licensed and knowledgeable in the following areas:
  - a. Painting;
  - b. Sheet rock-dry wall repair;
  - c. Basic electrical work;
  - d. General mechanical work;

- e. Basic woodworking skills;
  - f. Involvement with chemicals;
  - g. Fire protection equipment;
  - h. Food preparation equipment;
  - i. Plumbing;
  - j. Heating ventilation and air conditioning systems; and
  - k. Health care facility maintenance.
6. Additionally, each of Contractor's assigned staff shall be required to:
- a. Wear Contractor's uniform with badge at all times. Uniforms shall be clean and neat in appearance at all times.
  - b. Always be professional, but courteous.
  - c. Have good communication and conflict resolution skills.
  - d. Remain on premises at all times while on duty.
  - e. Communicate effectively in English, both verbally and in writing.
  - f. Be diligent and dependable.
  - g. Use all products, chemicals and other supplies in accordance with all federal, state, and local laws.
7. If, at any time County determines that any of Contractor's assigned staff requires corrective action, County shall notify Contractor who shall take immediate corrective action. Contractor shall be solely responsible for the hiring, supervising, training, disciplinary actions and termination of Contractor's employees.
8. If any of Contractor's assigned staff fails or refuses to carry out County's directions, or appears to be incompetent, or acts in a disorderly or improper manner, then upon County's request the Contractor shall replace the assigned staff with another assigned staff.
9. County shall furnish cell phones for on-site communication between staff assigned to provide service under the contract resultant from this RFP and County. Contractor shall ensure that all staff assigned shall comply with the County's policies regarding cell phone and internet usage.
10. Contractor shall ensure all employees receive training on an ongoing basis pertaining to HIPAA privacy; personal protection equipment; blood borne and air borne pathogens; general safety and handling and disposal of infectious waste. All training and documentation of training must be in accordance with all federal, state, and local laws and available for inspection by County upon request.
11. Contractor shall provide periodic reports to County with respect to routine and preventive maintenance.
12. In addition to the above requirements, Contractor's staff must provide the following services:
- a. Review invoices generated by SRC engineering department, contracted work, parts, and supplies.
  - b. Perform Clinical, Security, and Engineering Environmental rounds for deficiencies bi-monthly.
  - c. Resolve complaints related to engineering.

- d. Meet with Fire Marshall during scheduled and unscheduled inspections.
  - e. Communicate with Fire Marshall any resolutions for site deficiencies.
  - f. Submit purchase order requests
  - g. Serve as liaison to contractors providing repair, maintenance services, garbage collection, linen services, and pest control.
  - h. Provide problem-solving activities in areas related to engineering and grounds maintenance.
13. Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor shall abide by all safety and health laws, standards, rules, regulations, or orders, and all OSHA requirements ("health and safety laws"). Contractor shall not permit any work to be done on site that is in violation of any health and safety laws. In addition, Contractor shall be expected to provide training to Contractor's employees in requirements of health and safety laws and OSHA standards and training guidelines, including, but not limited to the following areas:
- a. Specific Operations:
    - i. Awareness of asbestos and lead in the workplace
    - ii. Working safely in confined spaces
    - iii. Lockout/Tagout on electrical systems and electrical safety
    - iv. Machine safety
    - v. Welding, cutting, and brazing safety
    - vi. Compressed gases and compressed air
    - vii. Blood borne pathogens and universal precautions
  - b. Personal Protection:
    - i. Preventing slips, trips, and falls
    - ii. Respirators and other protective equipment
    - iii. Hearing, hand, head protection
    - iv. Tailgate meeting
14. County and Contractor shall each designate a Project Manager. The parties' respective Project Managers are:

<b>For County:</b>	<b>For Contractor:</b>
Dawn Vercelli (or designee) Site Administrator Behavioral Health & Recovery Services 1904 Richland Avenue Ceres, CA 95307 (209) 541-2121 <a href="mailto:dvercelli@stanbhrs.org">dvercelli@stanbhrs.org</a>	Ken Cadorin (or designee) District Manager AMB Onsite Services – West, Inc. 600 Harrison Street, Suite 600 San Francisco, CA 94107 830 Riverside Parkway, Suite 40 West Sacramento, CA 95605 (415) 351-4386 (Office) (707) 249-5347 (Cell) <a href="mailto:Ken.cadorin@abm.com">Ken.cadorin@abm.com</a>

15. Contractor shall comply with all aspects of 42 CRF with respect to substance abuse confidentiality and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and Security Standards, as outlined in Exhibit B.
16. All services provided by Contractor and the manner in which services are to be provided are more particularly set forth in County's Request for Proposal #14-23 MP; the Contractor's responding proposal, as well as any plans, specifications, addenda, and any documents particularly required or provided (as may be applicable), all of which are incorporated herein by reference and made a part hereof (collectively, the "RFP"). All of the foregoing documents, as may be applicable, together with this Agreement, comprise the contract and all services provided hereunder shall be performed in accordance therewith. In the event there is a conflict between the terms and conditions set forth in this Agreement, those set forth in the RFP, and those set forth in Exhibit A, then in such case, the terms and conditions shall control in this order: 1<sup>st</sup>, Exhibit A, 2<sup>nd</sup>, this Agreement, and 3<sup>rd</sup>, the RFP.

**B. COMPENSATION**

The Contractor shall be compensated for the services provided under this Agreement as follows:

1. County shall reimburse Contractor for services delivered under the terms of this Agreement from the following funding source(s): Alcohol and Other Drug (AOD)
2. In consideration of Contractor's provision of services required under this Agreement, County shall reimburse Contractor a contract maximum amount not to exceed \$605,000 for the entire term of this Agreement, as listed below:

Fiscal Year	Building Maintenance Services	Mileage Reimbursement	Overtime	Total Amount
10/01/14-06/30/15	\$120,719	\$450	\$43,831	\$165,000
07/01/15-06/30/16	\$164,982	\$600	\$54,418	\$220,000
07/01/16-06/30/17	\$169,107	\$600	\$50,293	\$220,000
<b>Total Contract Maximum Amount</b>	<b>\$454,808</b>	<b>\$1,650</b>	<b>\$148,542</b>	<b>\$605,000</b>

3. Contractor shall submit monthly invoices for building maintenance services, mileage reimbursement and overtime (excludes any/all extraneous charges for computers, software, IT support, reports, communications, uniforms, fleet, fuel, training, licenses, contract labor, etc.) electronically to [abh@stanbhhs.org](mailto:abh@stanbhhs.org) or by mail to the following address:

Stanislaus County Behavioral Health & Recovery Services (BHRS)  
 800 Scenic Drive, Building 4  
 Modesto, CA 95350  
 Attention: Accounts Payable

**C. TERM**

1. Section 3.1 of the body of this Agreement is amended to read as follows:

"3.1 The term of this Agreement shall be from October 1, 2014 through June 30, 2017 unless sooner terminated as provided below. This Agreement will not automatically renew, but may be renewed for two (2) additional one-year terms by mutual, written agreement of the parties."

2. Section 3.4 of the body of this Agreement is amended to read as follows:

"3.4 Either party may terminate this Agreement upon ninety (90) days prior written notice to the other party. If, during the time which this Agreement is in effect, funds are not allocated to County, sufficient to allow for a continuation of this Agreement, then County may, at its sole discretion, terminate this Agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs."

**D. DEFENSE AND INDEMNIFICATION**

Section 7.1 of the body of this Agreement is amended to read as follows:

- "7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with any negligent acts, omissions, or willful misconduct in the performance of this Agreement by Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage, or expense arising from the sole negligence or willful misconduct of the County or its agents, officers, and employees."

**E. CONFIDENTIALITY**

Section 10 of the body of this Agreement is amended to read as follows:

"The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and not to disclose or reveal such information for any purpose not directly connected with the matter for which services are provided, except where disclosure is required by law."

**F. NONDISCRIMINATION**

Section 11 of the body of this Agreement is amended by adding the following:

- "11.4 The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable. Contractor and subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-1.4, 60-300.5(a) and 41 C.F.R. § 60-741.5(a). These regulations

prohibit discrimination against qualified minorities, women, protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified minorities and women, protected veterans and qualified individuals with disabilities.”

**G. DUPLICATE COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

## BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply with the privacy and security requirements of Title II of the Health Insurance Portability and Accountability Act of 1996, (Public Law 104-191), also known as "HIPAA", and Title XIII of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), "the ARRA/HITECH Act" or "the HITECH Act", as these laws may be subsequently amended, and implementing regulations enacted by the Department of Health and Human Services at 45 CFR Parts 160-164, and, regulations enacted with regard to the HITECH Act. The foregoing laws and rules are sometimes collectively referred to hereafter as "HIPAA".

If COUNTY becomes aware of a pattern of activity that violates the HIPAA Privacy Rule, and reasonable steps to cure the violation are unsuccessful, the COUNTY may terminate the Agreement, or if not feasible; report the problem to the Secretary of the US Department of Health and Human Services.

COUNTY and BA desire to facilitate the billing and/or transfer of protected health information (PHI), as defined in 45 CFR, Section 164.504, by electronically transmitting and receiving data in agreed formats and to assure that such transactions comply with relevant laws and regulations.

## 1. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning defined in the HIPAA and HITECH Statutes and Regulations.

1.1 "Breach" shall mean the unauthorized acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

1.1.1 Exceptions. The term "Breach" does not include:

1.1.1.1 Any unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and such information is not further acquired, accessed, used, or disclosed by any person; or

1.1.1.2 Any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and

1.1.1.3 Any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

1.2 "Business Associate"(BA) shall mean CONTRACTOR as identified in this Agreement.

1.3 "Covered Entity" shall mean Stanislaus County, Behavioral Health and Recovery Services (COUNTY).

1.4 "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

1.5 "Privacy Rule" shall mean the Standards for Privacy of individually identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.6 "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR, Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, Subpart C.

1.8 "Physical Safeguards" are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

1.9 "Security or Security measures" encompass all of the administrative, physical, and technical safeguards in an information system.

1.10 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

## 2. Operations

2.1 **Document Standards.** Each party may transmit to, or receive from, the other party, either electronically or using other media, PHI and/or individually identifiable health information, as defined in 42 U.S.C., Section 1320d, as it pertains to the provision of services under this Agreement. All documents shall be transmitted in accordance with the standards set forth in the Behavioral Health and Recovery Services Privacy Policy.

2.2 **System Operations.** Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing necessary to effectively, reliably, and confidentially transmit and receive documents.

## 3. Electronic Transmissions

Documents shall not be deemed to have been properly received, and no document shall give rise to any obligation, until decrypted and accessible to the receiving party at such party's receipt counter as designated by regulation or policy.

## 4. Security Standards

4.1 BA shall ensure the implementation of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits.

4.2 BA shall ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards;

4.3 BA is required to report to the covered entity any security incident of which it becomes aware.

4.4 BA shall make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary for purposes of determining the covered entity's compliance with the regulations.

4.5 Covered entity may terminate the contract if the covered entity determines that the BA has violated a material term of the contract.

## 5. Use and Disclosure of Protected Health Information

5.1 Except as otherwise provided in this Business Associate Exhibit, BA may use or disclose PHI to perform functions, activities or services for or on behalf of the COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the COUNTY or the minimum necessary policies and procedures of the COUNTY.

5.2 Except as otherwise limited in this Business Associate Exhibit, BA may use and disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it 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, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

5.3 Except as otherwise limited in this Business Associate Exhibit, BA may use PHI to provide data aggregation services related to the health care operation of COUNTY.

5.4 BA shall not use or further disclose PHI other than as permitted or required by this Business Associate Exhibit, or by law.



## 6. Breach Reporting

6.1 During the term of the agreement, BA shall notify COUNTY, in writing, within five (5) business days of the discovery of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which the BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws and regulations. A breach shall be treated as discovered by the BA as of the first day on which such breach or suspected breach is known to the BA (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the BA) or should reasonably have been known to the BA to have occurred. BA shall take (a) prompt corrective action to cure any Breach, (b) investigate or fully participate in an investigation of the suspected or actual breach of security, (c) assist the COUNTY in compliance with the Notification in The Case Of Breach requirements of Section 13402 of the HITECH Act, and (d) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Notification of Breach shall be made to:

**BHRS Privacy Officer  
Behavioral Health and Recovery Services  
800 Scenic Drive  
Modesto, CA 95350  
(209) 525-6225**

6.2 Reports of suspected and actual breaches to COUNTY shall include the following, at a minimum:

- a. Identify each individual whose unsecured protected health information has been, or is reasonably believed by BA to have been, accessed, acquired, used, or disclosed during the breach.
- b. Identify the nature of the Breach.
- c. Identify the date of the Breach.
- d. Identify the date of discovery of the Breach.
- e. Identify which elements of PHI were breached or were part of the Breach.
- f. Identify who was responsible for the Breach and who received the PHI.
- g. Identify what corrective actions the BA took or will take to prevent further incidents of Breach.
- h. Identify what BA did or will do to mitigate any adverse affects of the Breach.
- i. Identify BA contact individual and information for COUNTY to obtain additional information, if required.
- j. Provide copies of any Individual Notice, Media Notice, Notice to Secretary, or Posting on HHS Public Website that BA may have made pursuant to the HITECH Act.
- k. Provide such other information as COUNTY may reasonably request regarding the Breach.

## 7. Agents and Subcontractors of BA

BA shall ensure that any agent, including subcontractor, to which the BA provides PHI received from, or created or received by BA on behalf of the COUNTY, shall comply with the same restrictions and conditions that apply through this Business Associate Exhibit to the BA with respect to such information.

## 8. Access to PHI

8.1 BA shall provide access, within seven (7) days of such a request, to the COUNTY or, as directed by the COUNTY, to PHI in a designated record set to an individual in order to meet the requirements of Title 45, CFR, Section 164.524.

8.2 BA shall, within seven (7) days of such a request, provide individual patient or their legal representative with access to PHI contained in BA's records, pursuant to 45 CFR, Section 164.504 (e)(2)(F).

## 9. Amendment(s) to PHI

BA shall make any amendment(s) to PHI in a designated record set that the COUNTY directs or at the request of the COUNTY or an individual within seven (7) days of such request in accordance with Title 45, CFR, Section 164.526.

## 10. Records Available

BA shall make its internal practices, books, and records related to the use, disclosure, and privacy protection of PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY, available to the COUNTY or to

the Secretary of HHS for purposes of the Secretary determining compliance with the Privacy Rule, in a time and manner designed by the COUNTY or the Secretary of HHS.-

#### **11. Retention, Transfer and Destruction of Information**

11.1 Upon termination of this Agreement for any reason, BA shall retain all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY in a manner that complies with the Privacy Rule. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

11.2 Prior to termination of this Agreement, the BA may be required by the COUNTY to provide copies of PHI to the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

11.3 When the retention requirements on termination of the Agreement have been met, BA shall destroy all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA. BA, its agents or subcontractors shall retain no copies of the PHI.

11.4 In the event that BA determines that returning or destroying the PHI is not feasible, BA shall provide the COUNTY notification of the conditions that make destruction infeasible. Upon mutual agreement of the parties that the destruction of the PHI is not feasible, BA shall extend the protections of this Business Associate Exhibit to such PHI and limit further use and disclosures of such PHI for so long as BA, or any of its agents or subcontractors, maintains such PHI.

#### **12. Force Majeure**

No party shall be liable for any failure to perform its obligations in connection with any transaction or any document where such failure results from any act of nature or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) that prevent such party from transmitting or receiving any documents.

#### **13. Limitation of Damages**

Other than specified in elsewhere, neither party shall be liable to the other for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

#### **14. Continuing Privacy and Security Obligation**

BA's obligation to protect the privacy and security of the PHI, including all copies and any data derived this Agreement that may be individually identifiable, shall be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.

#### **15. Attorney-Client Privilege**

Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by BA or COUNTY by virtue of this Subparagraph.

#### **16. Interpretation**

Any ambiguity in this Business Associate Exhibit shall be resolved to permit the COUNTY to comply with the Privacy Rule and Security Standards.