

1 **CONTRACT NUMBER:** _____

2 **DEPARTMENT:** Mental Health

3 **COMPANY:** San Benito County Behavioral Health Services

4 **TYPE OF AGREEMENT:** Inpatient and Outpatient Services

5
6 **THIS AGREEMENT** is made and entered into by and between the County of Merced, a political
7 subdivision of the State of California, (hereinafter referred to as "COUNTY"), and **San Benito County**,
8 located at **1131 San Felipe Road, Hollister, California**, a political subdivision of the State of California,
9 (hereinafter referred to as "SAN BENITO").

10 **WHEREAS**, COUNTY, through its Mental Health Department, operates a Psychiatric Health
11 Facility, (PHF) and an outpatient clinic; and

12 **WHEREAS**, SAN BENITO, through its Behavioral Health Department, has need for additional
13 mental health facilities, psychiatric services and outpatient services for the treatment of their consumers;
14 and

15 **WHEREAS**, COUNTY, upon availability, can provide such facilities, psychiatric services and
16 outpatient services as needed by SAN BENITO; and

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

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

21 **1. SCOPE OF SERVICES**

22 COUNTY shall provide inpatient and outpatient services in accordance with the terms and
23 conditions stated herein, and any specifically referenced attachments hereto.

24 The following exhibits are specifically incorporated by reference, attached hereto, and made a
25 part hereof, except when in conflict with this Agreement or modified herein:

26 Exhibit A - Scope of Services – Psychiatric Health Facility Inpatient Services

27 Exhibit B - Scope of Services – Outpatient Services

28 Exhibit C - Service and Payment Authorization Form

1 **2. TERM**

2 The term of this Agreement shall begin on the 1st day of July, 2015, and continue until the 30th
3 day of June, 2018, unless sooner terminated in accordance with Sections entitled, "TERMINATION FOR
4 CAUSE" or "TERMINATION FOR CONVENIENCE" as set forth elsewhere in this Agreement.

5 **3. RATES- INPATIENT SERVICES**

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

8 **For the period of July 1, 2015 through November 14, 2015:**

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

10 COUNTY shall bill SAN BENITO the difference between COUNTY'S Published PHF
11 Charge of **\$938.35 per client per day** and any reimbursements received from the State
12 Medi-Cal billing process or any other payer sources. COUNTY shall include an
13 explanation of benefit received from other payer sources with bill.

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

15 COUNTY shall also bill SAN BENITO **\$140.75 per client per day**, which is 15% of
16 COUNTY'S Published PHF Charge.

17
18 **For the period of November 15, 2015 through June 30, 2018:**

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

20 COUNTY shall bill SAN BENITO the difference between COUNTY'S Published PHF
21 Charge of **\$1,072.00 per client per day** and any reimbursements received from the State
22 Medi-Cal billing process or any other payer sources. COUNTY shall include an
23 explanation of benefit received from other payer sources with bill.

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

25 COUNTY shall also bill SAN BENITO **\$160.80 per client per day**, which is 15% of
26 COUNTY'S Published PHF Charge.

1 The rate structure utilized to negotiate the contract is inclusive of all services defined as
2 psychiatric inpatient services in Title 9, Chapter 11, and that the rate structure does not include non-
3 hospital based physician or psychological services.

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

10 b. COUNTY shall bill SAN BENITO for all non-acute days incurred at COUNTY'S current
11 Published PHF rate plus the Administrative Overhead Charge, as set forth in this section.

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

18 d. In the event the consumer does not already have an acceptable physical examination
19 that is charted, as required, within twenty-four (24) hours of consumer's admission to the
20 COUNTY PHF, SAN BENITO agrees to pay COUNTY **SEVENTY SIX DOLLARS AND**
21 **NO CENTS (\$76.00) per exam** for history and physical examinations performed at the
22 facility by COUNTY'S sub-contractor, in accordance with regulations (one exam per
23 consumer per admission).

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

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

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

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

1. For SAN BENITO consumers enrolled in the County Medical Services Program (CMSP) and admitted to COUNTY'S PHF, COUNTY shall bill the CMSP Third Party Administrator per CMSP guidelines and at the CMSP reimbursable per diem rate.
2. COUNTY shall bill SAN BENITO and SAN BENITO shall be responsible for the difference between CMSP's reimbursable per diem rate and COUNTY'S billable rates as set forth in Section 5 of this agreement.
3. SAN BENITO shall also be responsible for reimbursing COUNTY for any ancillary services provided, such as physical examinations and/or guard services as set forth elsewhere in this Agreement.
4. If, for any reason, CMSP denies reimbursement of the claim submitted by COUNTY for services provided to SAN BENITO consumers, SAN BENITO shall be responsible for reimbursing COUNTY the total amount due for services provided.
5. If SAN BENITO authorizes an inpatient stay in excess of the limited number of inpatient days reimbursable by the CMSP third party administrator then SAN BENITO shall be responsible for reimbursing COUNTY the total amount due for services not reimbursed by the CMSP.
6. SAN BENITO shall be solely responsible for negotiation of appeals with CMSP for denial of claims.

4. RATES – OUTPATIENT SERVICES

1 a. For SAN BENITO'S Medi-Cal eligible beneficiaries, COUNTY shall be reimbursed for
2 outpatient services based on the COUNTY Maximum Allowable Rates in effect at the
3 time services are provided. The COUNTY Maximum Allowable Rates may be adjusted
4 for the fiscal year by the COUNTY at a later date, pursuant to COUNTY'S annual cost
5 report data, and these adjusted rate tables shall be the final reimbursement rates used
6 for the entire contract period. COUNTY shall bill SAN BENITO the difference between
7 the COUNTY Maximum Allowable reimbursement rate and any reimbursements received
8 from the State Medi-Cal billing process or any other payer sources. COUNTY shall also
9 bill SAN BENITO a 15% Administrative Overhead Charge based on the billed rate of the
10 outpatient service provided.

11 b. Any and all audit exceptions by SAN BENITO or any state or federal agency resulting
12 from an audit of COUNTY'S performance of this Agreement, or actions by COUNTY, its
13 officers, agents and employees shall first be established as the sole responsibility of the
14 COUNTY. If the results of any audit show that the funds paid to COUNTY under this
15 agreement exceeded the amount due, then COUNTY shall pay the excess amount to
16 SAN BENITO, not later than sixty (60) days after the final audit settlement, or at SAN
17 BENITO'S election, SAN BENITO may recover the excess or any portion of it by offsets
18 made by SAN BENITO against any payment owed to COUNTY under this or any other
19 Agreement.

20 **5. COMPENSATION**

21 SAN BENITO agrees to pay COUNTY and COUNTY agrees to receive payment for services provided to
22 SAN BENITO consumers authorized for treatment under this Agreement. The total amount of services
23 per the above rates shall not exceed the **Total Contract Amount of ONE HUNDRED SEVENTY FIVE**
24 **THOUSAND DOLLARS AND NO CENTS (\$175,000.00).**

25 **6. INVOICING**

26 COUNTY Fiscal Services shall invoice SAN BENITO monthly, addressed to the following:

27 San Benito County Behavioral Health Services
28 1131 San Felipe Road
Hollister, CA 95023
Attn: Accounting

1
2 **7. NOTICES**

3 All notices, requests, demands or other communications under this Agreement shall be in writing.

4 Notice shall be sufficiently given for all purposes as follows:

- 5 A. Personal Delivery. When personally delivered to the recipient, notice is effective upon
6 delivery.
- 7 B. First Class Mail. When mailed first class to the last address of the recipient known to the
8 party giving notice, notice is effective three mail delivery days after deposit in a United
9 States Postal Service office or mailbox.
- 10 C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective
11 upon receipt, if delivery is confirmed by return receipt.
- 12 D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or
13 charged to the sender's account, notice is effective on delivery, if delivery is confirmed by
14 the delivery service.
- 15 E. Electronic Transmission. When sent by facsimile transmission or by internet connection
16 to the last noticed facsimile or internet location provided by the recipient to the party
17 giving notice, notice is effective upon receipt, provided that a duplicate copy of the notice
18 is promptly given by first class mail or certified mail or by overnight delivery to the
19 receiving party. Any notice given by electronic transmission shall be deemed received on
20 the next business day if received after 5:00 P.M. (recipient's time) or on a non-business
21 day.

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

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

28 COUNTY

SAN BENITO COUNTY

Director
Merced County Mental Health

Director
San Benito County Behavioral Health

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

1131 San Felipe Road
Hollister, CA 95023
(831) 636-4020
Fax (831) 636-4025

Any party may change its address or electronic addresses by giving the other party notice of the change in any manner permitted by this Agreement.

8. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

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

9. TERMINATION FOR CONVENIENCE

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

10. TERMINATION FOR CAUSE

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

11. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing

1 and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be
2 binding on any of the parties hereto.

3 **12. INSURANCE**

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

7 **13. INDEMNIFICATION**

8 COUNTY shall indemnify, defend and hold harmless SAN BENITO, its officers, employees and
9 agents, from and against any claims, damages, costs, expenses, including any amount equal to
10 reasonable attorney's fees, or liabilities arising out of or in any way connected with this Agreement,
11 including, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property,
12 or for death or injury to any person or persons in proportion to and to the extent that such claims,
13 damages, expenses, liabilities or losses arise from the negligence or willful acts or omissions of
14 COUNTY, its officers, employees or agents.

15 SAN BENITO shall indemnify, defend and hold harmless COUNTY, its officers, supervisors,
16 employees and agents, from and against any claims, damages, costs, expenses, including any amount
17 equal to reasonable attorney's fees, or liabilities arising of or in any way connected with this Agreement,
18 including, without limitation, claims damages, expenses, or liabilities for loss or damage to any property,
19 or for death or injury to any person or persons in proportion to and to the extent that such claims,
20 damages, expenses, liabilities or losses arise from the negligence or willful acts or omissions of SAN
21 BENITO, its officers, employees or agents.

22 The obligations set forth above shall survive expiration or termination of this Agreement.

23 **14. INDEPENDENT CONTRACTOR**

24 It is mutually agreed and understood that neither party nor its contractors, sub-contractors and
25 employees, if any, shall have any claim under this Agreement or otherwise against the other party for
26 vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury,
27 disability or illness, or loss of life or income, by whatever cause.

SAN BENITO shall ensure that all personnel used as contractors, sub-contractors and employees to perform the services reserved for SAN BENITO, are aware that COUNTY is not responsible for any benefits or coverage for their efforts.

15. CONFIDENTIALITY

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

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

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

16. COMPLIANCE AND INTEGRATED ETHICS

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

The COUNTY Mental Health Department's Compliance and Integrated Ethics Plan (CIEP) is necessary to ensure compliance with federal, state, and local laws, rules, and regulations regarding professional conduct and to ensure that the conduct of employees reflects the principles of the

Department to treat consumers, the general public, and other employees with integrity, honesty, courtesy, fairness, and respect.

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

17. CULTURAL COMPETENCY

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

18. FEDERALLY EXCLUDED INDIVIDUALS AND ENTITIES

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

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

19. QUALITY OF SERVICE

SAN BENITO and COUNTY shall perform these services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by each profession. SAN

1 BENITO and COUNTY shall comply with all applicable Federal, State, and Local laws, ordinances, codes,
2 and regulations in performing its services.

3 **20. APPLICABLE LAW; VENUE**

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

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

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

14 **21. ENTIRE AGREEMENT**

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

19 **22. COUNTY NOT OBLIGATED TO THIRD PARTIES**

20 COUNTY shall not be obligated or liable hereunder to any party other than SAN BENITO. SAN
21 BENITO shall not be obligated or liable hereunder to any party other than COUNTY.

22 **23. STANDARDS OF PRACTICE**

23 Standards of practice of COUNTY and SAN BENITO shall be determined by the professional
24 standards for the employees and officers of COUNTY and SAN BENITO in their trade or field of expertise
25 and all applicable provisions of law and other rules and regulations of any and all governmental
26 authorities relating to provision of services as defined in this Agreement.

27 **24. COMPLIANCE WITH STATE LAWS AND REGULATIONS**

28 SAN BENITO and COUNTY agree to comply with all State laws and regulations that pertain to
health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other

1 matters applicable to SAN BENITO and COUNTY, their sub-grantees, contractors or subcontractors, and
2 their work.

3 **25. PERSONNEL**

4 SAN BENITO and COUNTY each represent that it has, or will secure at its own expense, all
5 personnel required in performing the services under this Agreement. All of the services required
6 hereunder will be performed by the assigned party or under its supervision, and all personnel engaged in
7 the work shall be qualified to perform such services.

8 **26. NOTIFICATION TO MENTAL HEALTH STAFF**

9 COUNTY shall notify SAN BENITO of all unusual or actual incidents (i.e., suspected abuse,
10 injuries, and deaths) affecting SAN BENITO clients within twenty-four hours (24) of occurrence and
11 provide SAN BENITO with a copy of all investigation reports concerning incidents and the disposition of,
12 or corrective action taken to resolve the complaint. SAN BENITO shall provide client case history as
13 appropriate for disposition.

14 **27. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

15 SAN BENITO and COUNTY shall comply with all applicable federal, state, and local Anti-
16 discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care
17 leave, harass, or allow harassment against any employee, applicant for employment, employee or agent
18 of SAN BENITO or COUNTY, or recipient of services contemplated to be provided or provided under this
19 Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national
20 origin, ethnic group identification, gender, sexual orientation, age (over 40), medical condition (including
21 HIV and AIDS), or physical or mental disability. Each party shall ensure that the evaluation and treatment
22 of its employees and applicants for employment, and recipients of services are free from such
23 discrimination and harassment.

24 Each party represents that it is in compliance with and agrees that it will continue to comply with
25 the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and
26 Housing Act (Government Code § 12900 et seq.), and ensure a workplace free of sexual harassment
27 pursuant to Government Code 12950; and regulations and guidelines issued pursuant thereto.

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

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

Notwithstanding other provisions of the section, COUNTY and SAN BENITO shall require a determination of medical necessity pursuant to Title 9, CCR, Section 1820.205, Section 1830.205, or Section 1830.210, prior to providing covered services to a beneficiary.

28. CAPTIONS

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

1
2 **29. SEVERABILITY**

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

6 **30. LICENSE AND PERMITS**

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

12 **31. LICENSES**

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

16 **32. RECORDS**

17 Both parties agree to extend to the COUNTY'S Director of Mental Health Department, and SAN
18 BENITO'S Behavioral Health Services Director, or designees, and the State Department of Health Care
19 Services, or their designees, the right to review records, in regard to SAN BENITO consumers placed in
20 COUNTY's facilities, in order to ensure compliance with the terms and conditions of this Agreement.

21 Both parties shall maintain statistical records in the manner provided by the State Health and
22 Welfare Agency and shall make such records available to either party as required by the COUNTY'S
23 Director, SAN BENITO'S Behavioral Health Services Director, the California State Health Department,
24 and the California State Health and Welfare Agency.

25 Both parties shall grant to each other, the State of California, Auditor General, (if applicable) the
26 Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized
27 representatives access to any books, documents, papers and records of SAN BENITO and COUNTY
28 which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts,
transactions, program compliance and evaluation of consumer complaints. SAN BENITO and COUNTY

1 must retain all such required records for five (5) years after SAN BENITO makes final payment and all
2 other pending matters are closed.

3 Clinical records of each consumer shall be the property of COUNTY'S Mental Health Department
4 and shall be maintained for seven (7) years or until audit findings are resolved, whichever occurs later.

5 Review as provided by this section and by these parties or agencies shall otherwise conform to
6 all appropriate confidentiality statutes.

7 **33. REPORTS AND INFORMATION**

8 To the extent permitted by law, COUNTY shall furnish SAN BENITO reports as SAN BENITO
9 may request pertaining to the work or services undertaken pursuant to this Agreement.

10 **34. BREACH OF CONTRACT**

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

13 **35. CONFLICT OF INTEREST**

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

1 **36. DUPLICATE COUNTERPARTS**

2 This Agreement may be executed in duplicate counterparts, each of which shall be deemed a
3 duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.
4

5 **COUNTY OF MERCED**

6 A Political Subdivision of the
7 State of California

8 By _____
9 Chairperson, Board of Supervisors

10
11 Date _____

12 APPROVED AS TO LEGAL FORM:
13 JAMES N. FINCHER
14 MERCED COUNTY COUNSEL

15 By _____
16 Deputy

17
18 RECOMMENDED FOR APPROVAL
19 MERCED COUNTY MENTAL HEALTH

20
21 By _____
Yvonnia Brown, MSW, Director

22
23 Budget Unit: 41500
24 Expenditure Account: 96828
25 Mode of Service: 05
26 Service Function: 20
27 Provider # 2415
28 Legal Entity # 00024

COUNTY OF SAN BENITO

A Political Subdivision of the
State of California

By  _____
Alan Yamamoto, Behavioral Health Director

Date 5/26/2016

APPROVED AS TO LEGAL FORM:
SAN BENITO COUNTY COUNSEL

By  6-1-2016
Irma Valencia, County Counsel

By _____
Chairperson, Board of Supervisors

Date _____

HIPAA BUSINESS ASSOCIATE ADDENDUM

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

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

1. Use and Disclosure of Protected Health Information:

- a. Except as otherwise provided in this Addendum, Business Associate may use or disclose HIPAA protected health information (hereafter referred to as "PHI") or electronic protected health information (hereinafter referred to as "EPHI") to perform functions, activities or services for or on behalf of the County, as specified in this Addendum, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the County or the minimum necessary policies and procedures of the County component.
- b. Except as otherwise limited in this Addendum, Business Associate may use and disclose PHI/EPHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such disclosures are required by law or Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that such PHI/EPHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and that such person or entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited by this Addendum, Business Associate may access PHI/EPHI to provide data aggregation services related to the health care operation of the County without disclosure of confidential information of individuals..

2. Safeguard of PHI/EPHI:

- a. Business Associate shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI/EPHI not provided for by this Addendum, the Privacy Rule, or the Security Rule.
- b. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the County health care component as required by the HIPAA Security Rule.

1 3. Unauthorized Use or Disclosure of PHI/EPHI:

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

4 4. Mitigation of Disallowed Uses and Disclosures:

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

9 5. Agents and Subcontractors of the Business Associate:

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

15 6. Access to PHI/EPHI:

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

22 7. Amendment(s) to PHI and Addendum:

23 a. Business Associate shall make any amendment(s) to PHI/EPHI that the County health
24 care component directs or at the request of the County, and in a time and manner
25 designated by the County component in accordance with the Privacy Rule and 45 CFR
26 164.526.

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

37 8. Documentation of Uses and Disclosures:

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

1 9. Accounting of Disclosures:

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

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

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

10 11. Federal Health Care Exclusion:

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

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

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

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

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

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

13. Material Breach and Termination:

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

14. Indemnification and Hold Harmless:

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

15. Interpretation:

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

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

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

SCOPE OF SERVICES**PSYCHIATRIC HEALTH FACILITY-INPATIENT SERVICES****1. RESPONSIBILITIES OF COUNTY**

- a. COUNTY shall make beds available at COUNTY's Psychiatric Health Facility (PHF) to SAN BENITO beneficiaries for the treatment of adults based upon availability and upon approval by COUNTY's Director of Mental Health, or designee.
- b. COUNTY shall admit SAN BENITO consumers through COUNTY's Emergency Services or PHF staff.
- c. COUNTY's Utilization Review (UR) staff will monitor SAN BENITO consumers at COUNTY's PHF on an ongoing basis to determine medical necessity.
- d. COUNTY, when available, may provide consumers, as clinically indicated, with all required and related psychiatric medical services including, but not limited to, laboratory service, radiology service, E.E.G.s, E.K.G.s and pharmacy service. COUNTY shall provide these services in accordance with the COUNTY Mental Health Medication Monitoring Screening Criteria Manual without any other prior authorization process. Such services may be provided through independent contractors, but if so done, COUNTY shall remain responsible for the monitoring of such subcontractors and the work thereof.
- e. Where special medical, surgical or other additional services are deemed appropriate, the authorization of SAN BENITO shall be obtained. SAN BENITO shall provide reimbursement for all authorized special services not covered by another payer source. Notification shall be given to SAN BENITO when reasonably possible if consumers are moved off the psychiatric ward or are the subject of, or have committed any unusual incidents.
- f. Facility: COUNTY shall maintain a facility, which will provide an environment conducive to the treatment of SAN BENITO consumers. This facility shall include, but not be limited to, adequate room, patient bed space, individual storage for patient use, telephone service, patient access to family members and visitors and patient access to the

COUNTY'S Patient's Rights Advocate for issues pertaining to COUNTY'S facility or the SAN BENITO consumer's stay at the facility. Monolingual patients shall have access to bilingual staff services. The consumers will receive face-to-face contact daily with a psychiatrist. COUNTY's psychiatrist will document medical necessity daily.

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

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

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

1 **2. RESPONSIBILITIES OF SAN BENITO**

- 2 a. SAN BENITO shall make requests for admission by phone to COUNTY's PHF
3 designated staff at (209) 381-6879.
- 4 b. SAN BENITO shall be responsible for their consumers' initial medical screening and
5 clearance prior to admission at COUNTY's PHF. Each consumer's screening and
6 clearance must be charted within twenty-four (24) hours of admission. SAN BENITO
7 shall be responsible for any costs associated with their consumers screening and
8 clearance.
- 9 c. After obtaining admitting privileges to COUNTY's PHF, SAN BENITO physicians, at their
10 option, shall serve as the attending physicians at COUNTY's PHF when providing care
11 for their consumers, including performing charting services.
- 12 d. SAN BENITO, or its designee, shall provide all required consumer transportation to and
13 from COUNTY's PHF for those consumers who are SAN BENITO residents.
- 14 e. As needed, SAN BENITO, or its designee, shall provide two (2) guards, twenty-four (24)
15 hours per day to monitor SAN BENITO inmates or mutually agreed high risk patients
16 admitted to COUNTY'S PHF.
- 17 f. If it becomes a necessity that SAN BENITO patients admitted to COUNTY's PHF require
18 guard services, COUNTY shall provide guard services through its security sub-contractor.
19 COUNTY shall notify SAN BENITO of the need for services. SAN BENITO shall
20 reimburse COUNTY for the cost to provide guard services to SAN BENITO patients.

21 **3. JOINT RESPONSIBILITIES**

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

25 A Discharge Summary for SAN BENITO consumers of inpatient psychiatric services shall be
26 provided to SAN BENITO staff. This data shall consist of the following: (1) completed discharge form, (2)
27 patient history, (3) physical exam results, and (4) any laboratory work performed. The discharge
28 summary shall be provided to SAN BENITO no later than fourteen (14) working days after the date the
SAN BENITO consumer is discharged from COUNTY's facility. COUNTY shall also provide SAN

1 BENITO additional records and data, including, but not limited to, treatment costs data, as may be
2 required by SAN BENITO for the preparation of the patient for post-hospitalization placement and/or
3 preparation of required reports. COUNTY shall permit qualified SAN BENITO staff to document in
4 COUNTY'S records pertinent data necessary for the SAN BENITO consumers care and funding within the
5 provisions and limitations of HIPAA. All such documentation shall clearly show the entries to be SAN
6 BENITO staff. Records access for SAN BENITO staff shall be limited to SAN BENITO consumers.

SCOPE OF SERVICES
OUTPATIENT SERVICES

1. RESPONSIBILITIES OF COUNTY

For SAN BENITO'S Medi-Cal clients who are residents of Community Care Facilities/Board and Care Homes in Merced County during the term of this Agreement, COUNTY shall provide medication support services and/or mental health services.

2. TREATMENT AUTHORIZATION

COUNTY will submit a request for SAN BENITO'S written authorization prior to providing medication support services and/or mental health services to SAN BENITO clients.

3. RESPONSIBILITIES OF SAN BENITO

SAN BENITO shall be responsible for handling conservatorship matters, securing Medi-Cal and SSI payment to Board and Care operators and transportation of clients within Merced County. SAN BENITO shall provide written authorization for medication support services and/or mental health services for SAN BENITO clients immediately upon request by COUNTY or transport their clients to alternate locations.

4. REPORTING

SAN BENITO may require that copies of the individual service plans be submitted every six months by COUNTY on each client. Individual contact notes will be provided upon written request.

5. NOTIFICATION

SAN BENITO will notify COUNTY, in writing, when SAN BENITO no longer needs COUNTY'S medication support services and/or mental health services for a particular client.



DEPARTMENT OF MENTAL HEALTH

Mental Health Services
 P.O. Box 2087
 Merced, CA 95344-1046
 (209) 381-6800
 www.co.merced.ca.us

Service and Payment Authorization Form

I authorize the admission of (patient's name) _____,

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

_____ County will be responsible for the following:

- 1) Transportation of the patient to and from Marie Green Psychiatric Center.
- 2) Payment of Services rendered to the client at the rate of \$938.35 per client per day plus \$140.75 per client per day Administrative Overhead costs during the period of July 1, 2015 to November 14, 2015.
- 3) Payment of Services rendered to the client at the rate of \$1,072.00 per client per day plus \$160.80 per client per day Administrative Overhead costs during the period of November 15, 2015 to June 30, 2018.
- 4) If the Client has Medi-Cal, placing County will be responsible to cover all charges not reimbursed by the State or other payer source.
- 5) Placement of patient post discharge.
- 6) Provision of at least one guard if necessary.
- 7) Ensure that all medications are sent with patient and/or reimburse the cost of any medical medication ordered or provided during the patient's stay at Marie Green Psychiatric Center.
- 8) Payment of \$76 for History and Physical, if ordered by the attending psychiatrist.

☐ Authorization Approved

☐ Authorization Denied

By: _____ County
 (Please Print)

Signature: _____

Please provide reason(s) if authorization is denied.

Document completed by: _____

MCDMH Staff