

**AGREEMENT FOR SERVICES OF  
INDEPENDENT CONTRACTOR**

Between

**COUNTY OF SANTA BARBARA  
DEPARTMENT OF BEHAVIORAL WELLNESS**

**AND**

**PATH**

**FOR**

**MENTAL HEALTH SERVICES**

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**AND CONDITIONS**

## **AGREEMENT**

### **FOR SERVICES OF INDEPENDENT CONTRACTOR**

**THIS AGREEMENT** is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County or Department) and PATH, a California public benefits corporation, with an address at 340 North Madison Avenue, Los Angeles, California, 90004 (hereafter Contractor) wherein Contractor agrees to provide and County agrees to accept the services specified herein (hereafter Agreement).

**WHEREAS**, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County and County desires to continue to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

**1. DESIGNATED REPRESENTATIVE.**

Director at phone number 805-681-5220 is the representative of County and will administer this Agreement for and on behalf of County. Joel John Roberts at phone number 323-644-2232 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

**2. NOTICES.**

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County:                      Director  
   County of Santa Barbara  
   Department of Behavioral Wellness  
   300 N. San Antonio Road  
   Santa Barbara, CA 93110  
   FAX: 805-681-5262

To Contractor:                Joel John Roberts, CEO  
   People Assisting the Homeless (PATH)  
   340 North Madison Avenue  
   Los Angeles, CA 90004  
   Phone: 323-644-2232  
   Fax: 323-644-2288

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This

Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

**3. SCOPE OF SERVICES.**

Contractor agrees to provide services to County in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

**4. TERM.**

Contractor shall commence performance on **7/01/2020** and end performance upon completion, but no later than **6/30/2023** unless otherwise directed by County or unless earlier terminated.

**5. COMPENSATION OF CONTRACTOR.**

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference.

**6. INDEPENDENT CONTRACTOR.**

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent Contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

**7. STANDARD OF PERFORMANCE.**

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

**8. DEBARMENT AND SUSPENSION.**

Contractor certifies to County that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts, including but not limited to exclusion from participation from federal health care

programs under section 1128 or 1128A of the Social Security Act. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

#### **9. TAXES.**

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

#### **10. CONFLICT OF INTEREST.**

Contractor covenants that Contractor presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to the County, in writing, any potential conflict of interest. County retains the right to waive a conflict of interest disclosed by Contractor if County determines it to be immaterial, and such waiver is only effective if provided by County to Contractor in writing.

#### **11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.**

County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Contractor shall not release any of such items to other parties except after prior written approval of County. Contractor shall be the legal owner and Custodian of Records for all County client files generated pursuant to this Agreement, and shall comply with all Federal and State confidentiality laws, including Welfare and Institutions Code (WIC) § 5328; 42 United States Code (U.S.C.) § 290dd-2; and 45 CFR, Parts 160 – 164 setting forth the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor shall inform all of its officers, employees, and agents of the confidentiality provision of said laws. Contractor further agrees to provide County with copies of all County client file documents resulting from this Agreement without requiring any further written release of information. Within HIPAA guidelines, County shall have the unrestricted authority to publish, disclose, distribute, and/or otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

Unless otherwise specified in Exhibit A, Contractor hereby assigns to County all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Contractor pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Contractor agrees to take such

actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Contractor warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Contractor at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Contractor hereunder infringe upon intellectual or other proprietary rights of a third party, and Contractor shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

## **12. NO PUBLICITY OR ENDORSEMENT.**

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

## **13. COUNTY PROPERTY AND INFORMATION.**

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

## **14. RECORDS, AUDIT, AND REVIEW.**

Contractor shall keep all records and supporting documentation pertaining to the performance of this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain all records until such time that the State Department of Health Care Services completes all actions associated with any audit, including appeals, for the fiscal year(s) covered by this Agreement, or not less than ten (10) years following the termination of this Agreement, whichever is later. All accounting records shall be kept in accordance with generally accepted accounting principles.

County, and any authorized state or federal official or designee, shall have the right to audit, review, and copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor shall allow the auditor(s) access to such documents and records at any time during Contractor's regular business hours or upon reasonable notice, and to allow interviews of any employees who might reasonably have information related to such records. Contractor agrees to include a similar right to audit records and interview staff in any subcontract related to performance of this Agreement. In addition, Contractor shall comply with the record keeping and audit requirements included in EXHIBIT A - Statement of Work to this Agreement. Contractor shall participate in any audits and reviews, whether by County or the State, at no charge to County.

If federal, state or County audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but

not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from County, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to County as specified by County in the notification. The provisions of the Records, Audit, and Review section shall survive any expiration or termination of this Agreement.

#### **15. INDEMNIFICATION AND INSURANCE.**

Contractor agrees to the indemnification and insurance provisions as set forth in EXHIBIT C – Standard Indemnification and Insurance Provisions attached hereto and incorporated herein by reference.

#### **16. NONDISCRIMINATION.**

County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance. Contractor shall also comply with the nondiscrimination provisions set forth in EXHIBIT A - Statement of Work to this Agreement.

#### **17. NONEXCLUSIVE AGREEMENT.**

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

#### **18. NON-ASSIGNMENT.**

Contractor shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

#### **19. TERMINATION.**

**A. By County.** County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.

- 1. For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.
- 2. For Nonappropriation of Funds.**
  - i. The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to County by the County, State and/or federal governments for this Agreement for periodic payment in the



current or any future fiscal period, then the obligations of County to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

- ii. As permitted by applicable State and Federal laws regarding funding sources, if funding to make payments in accordance with the provisions of this Agreement is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to County by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments will be delayed or be reduced accordingly or County shall have the right to terminate the Agreement. If such funding is reduced, County in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed. In these situations, County will pay Contractor for Services and Deliverables and certain of its costs. Any obligation to pay by County will not extend beyond the end of County's then-current funding period.
- iii. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

**3. For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.

**B. By Contractor.** Should County fail to pay Contractor all or any part of the payment set forth in EXHIBIT B, Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.

**C. Upon Termination.** Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing

is cumulative and shall not affect any right or remedy which County may have in law or equity.

**20. SECTION HEADINGS.**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**21. SEVERABILITY.**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**22. REMEDIES NOT EXCLUSIVE.**

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**23. TIME IS OF THE ESSENCE.**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**24. NO WAIVER OF DEFAULT.**

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

**25. ENTIRE AGREEMENT AND AMENDMENT.**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel. Requests for changes to the terms and conditions of this agreement after April 1 of the Fiscal Year for which the change would be applicable shall not be considered. All requests for changes shall be in writing. Changes shall be made by an amendment pursuant to this Section. Any amendments or modifications that do not materially change the terms of this Agreement (such as changes to the Designated Representative or Contractor's address for purposes of Notice) may be approved by the Director of the Department of Behavioral Wellness. The Board of Supervisors of the County of Santa Barbara must approve all other amendments and modifications.

**26. SUCCESSORS AND ASSIGNS.**

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

**27. COMPLIANCE WITH LAW.**

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

**28. CALIFORNIA LAW AND JURISDICTION.**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**29. EXECUTION OF COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**30. AUTHORITY.**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(s), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

**31. SURVIVAL.**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**32. PRECEDENCE.**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

**33. COMPLIANCE WITH HIPAA.**

Contractor is expected to adhere to Health Insurance Portability and Accountability Act (HIPAA) regulations and to develop and maintain comprehensive patient confidentiality policies and procedures, provide annual training of all staff regarding those policies and procedures, and demonstrate reasonable effort to secure written and/or electronic data. The parties should anticipate that this Agreement will be modified as necessary for full compliance with HIPAA.

**34. COURT APPEARANCES.**

Upon request, Contractor shall cooperate with County in making available necessary witnesses for court hearings and trials, including Contractor's staff that have provided treatment to a client referred by County who is the subject of a court proceeding. County shall issue subpoenas for the required witnesses upon request of Contractor.

**35. PRIOR AGREEMENTS.**

Upon the effective date, this Agreement supersedes all prior agreements between County and Contractor related to the scope of work contained in this Agreement.

THIS SECTION LEFT BLANK INTENTIONALLY

SIGNATURE PAGE FOLLOWS

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **PATH**

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
GREGG HART, CHAIR  
BOARD OF SUPERVISORS

Date: \_\_\_\_\_

**ATTEST:**

MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**CONTRACTOR:**

PATH

By: \_\_\_\_\_  
Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Deputy

**RECOMMENDED FOR APPROVAL:**

ALICE GLEGHORN, PH.D., DIRECTOR  
DEPARTMENT OF BEHAVIORAL  
WELLNESS

By:  \_\_\_\_\_  
Director

**APPROVED AS TO INSURANCE FORM:**

RAY AROMATORIO,  
RISK MANAGER

By: \_\_\_\_\_  
Risk Management

**THIS AGREEMENT INCLUDES THE FOLLOWING EXHIBITS:**

**EXHIBIT A – MHS STATEMENT OF WORK**

EXHIBIT A-1 Transitional Housing Bed Services

**EXHIBIT B – FINANCIAL PROVISIONS**

EXHIBIT B Financial Provisions: MHS

EXHIBIT B-1 Schedule of Rates and Contract Maximum: MHS

**EXHIBIT C – STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS**

**EXHIBIT A-1**

**MENTAL HEALTH SERVICES (MHS)**

**STATEMENT OF WORK**

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**EXHIBIT A-1**  
**STATEMENT OF WORK: MHS**  
**TRANSITIONAL HOUSING BEDS SERVICES**

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- 1. PROGRAM SUMMARY:** The **PATH** Homeless Shelter Program (hereafter the “Program”) provides shelter services as described in Section 2, Services, below to mentally ill clients who are homeless, at risk of homelessness, or living in substandard housing. The Program will be located at 816 Cacique St., Santa Barbara, California.
- 2. SERVICES.**
  - A.** Contractor shall provide 22 daily reserved shelter beds for homeless, mentally ill clients, screened and referred by Homeless Services Case Manager, County Department of Behavioral Wellness (“Behavioral Wellness”).
  - B.** Contractor shall:
    1. Monitor clients for physical health, dental, and vision issues;
    2. Assist clients with personal hygiene;
    3. Assist clients to access community supports and resources; and
    4. Provide an evening meal, breakfast, shower, laundry, mail, and locker service included in each night’s stay, for as long as the client is a resident at the Program.
    5. Coordinate housing and employment services with on-site homeless services case manager and/or other behavioral health service providers.
- 3. CLIENTS.** Contractor shall provide 22 shelter beds and the services described in Section 2, Services, to individuals with severe mental illness who are any of the following:
  - A.** Homeless;
  - B.** Needing shelter while awaiting receipt of benefits; or
  - C.** Temporarily displaced while awaiting placements in more permanent housing.
- 4. LENGTH OF STAY.**
  - A.** The Program shall accommodate each client for a length of stay until the client finds suitable housing and so long as the client continues to be appropriate for the program; the suitability of housing and the client’s appropriateness for the program are determined by the Homeless Services Case Manager, Behavioral Wellness. PATH shall accommodate clients for the length of stay determined by the Homeless Services Case Manager, Behavioral Wellness.
  - B.** Contractor shall work with Behavioral Wellness to support developed goals for encouraging clients to transition to the least restrictive housing appropriate to the client’s needs.
- 5.** If County has not filled all 22 beds by 10:00 PM each night, County releases its claim to all but one (1) of the beds remaining available.



## **6. ADMISSION PROCESS.**

- A.** All referrals of County clients will be coordinated through Behavioral Wellness' designated staff to include, but not be limited to, Homeless Outreach Worker staff.
- B.** Behavioral Wellness staff shall notify Contractor of client referrals either by telephone, in person, or by secure email.
- C.** Contractor shall provide on-site staff to admit clients seven (7) days per week. Contractor shall coordinate with the Homeless Services Case Manager, Behavioral Wellness, who shall be available on a regularly scheduled basis, as well as for emergencies. In emergencies, Contractor staff will call or page the County Homeless Outreach Worker on duty. County staff will provide liaison, linkage (when appropriate), assessment/evaluation, and crisis services. After hours' crisis services are to be referred to the County Assessment Team.
- D.** In the case of an aggressive, violent, or acutely intoxicated mentally ill client, or client unable to follow Program rules, the Program staff will notify Homeless Services Case Manager, Behavioral Wellness immediately of the situation and will advise of any action taken to ensure the safety and well-being of the client, other clients, volunteers, and staff.
- E.** In the case of assaultive risk factors, side effects requiring medical attention or observation, behavioral symptoms presenting possible health problems, or any behavioral symptom that may compromise the appropriateness of the placement, the Program staff will notify Homeless Services Case Manager, Behavioral Wellness immediately of the situation and will advise of any action taken to ensure the safety and well-being of the client, other clients, volunteers, and staff.
- F.** Contractor shall immediately notify the Behavioral Wellness Director or designee, regardless of whether the client has a case file (episode) open with the County, should any of the following events occur: death, fire setting, police involvement, media contact, any behavior leading to potential liability, and any behavioral symptom that may compromise the appropriateness of the placement.

## **7. PERFORMANCE.** Contractor shall adhere to all County requirements and all relevant provisions of law that are now in force or which may hereafter be in force, including all relevant provisions of the following:

- A.** The County Mental Health Plan, Contract 17-94613 between the County Department of Behavioral Wellness and the State Department of Health Care Services (DHCS), available at <http://countyofsb.org/behavioral-wellness>;
- B.** The Department of Behavioral Wellness Steering Committee Vision and Guiding Principles, available at <http://countyofsb.org/behavioral-wellness>;
- C.** California's Mental Health Services Act; and
- D.** California Code of Regulations Title 9, Division 1.

## **8. SITE STANDARDS.**

- A.** For programs located at Contractor's sites, Contractor shall develop and maintain a writer disaster plan for the Program site and shall provide annual disaster training to staff that addresses, at a minimum: emergency staffing levels for the continuation of services under the Program, patient safety, facility safety, safety of medication storage and dispensing medication, and protection of client records, as required by this Agreement.

## **9. CONFIDENTIALITY.**

- A.** Contractor, its employees, agents, or subcontractors agree to maintain the confidentiality of patient records pursuant to: Title 42 United State Code (USC) Section 290 dd-2; Title 42 Code of Federal Regulations (CFR), Part 2; Title 42 CFR Section 438.224; 45 CFR Section 96.132(e), 45 CFR Parts 160, 162, and 164; Title 22 California Code of Regulations (CCR) Section 51009; Welfare & Institutions Code (W&IC) Section 14100.2; Health and Safety Code (HSC) Sections 11812 and 11845.5; Civil Code Sections 56 – 56.37, 1798.80 – 1798.82, and 1798.85; and the Compliance with HIPAA section of this Agreement, as applicable. Patient records must comply with all appropriate State and Federal requirements.
- B.** Contractor shall ensure that no list of persons receiving services under this Agreement is published, disclosed, or used for any purpose except for the direct administration of this services under this Agreement or other uses authorized by law that are not in conflict with requirements for confidentiality contained in the preceding codes.
- C.** Contractor shall comply with Exhibit F to the MHP to the extent Contractor is provided Personal Health Information (“PHI”), Personal Information (“PI”), or Personally Identifiable Information as defined in Exhibit F of the MHP from County to perform functions, services, or activities specified in this Agreement.
- D.** Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to County or DHCS at no cost to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against County, DHCS, its directors, officers or employees based upon claimed violation of HIPAA, or the HIPAA regulations, which involves inactions or actions by Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
- E.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all PHI, PI and PII accessed in a database maintained by County, received by Contractor from County, or acquired or created by Contractor in connection with performing functions, services, or activities specified in this Agreement on behalf of County that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. If return or destruction is not feasible, Contractor shall notify County of the conditions that make the return or destruction infeasible, and County and Contractor shall determine the terms and conditions under which Contractor may retain the PHI, PI or PII. Contractor shall continue to extend the protections of Exhibit F of the MHP to such PHI, PI and PII, and shall limit further use of such data to those purposes that

make the return or destruction of such data infeasible. This paragraph shall also apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.

## **10. CULTURAL COMPETENCE.**

- A. Contractor shall report on its capacity to provide culturally competent services to culturally diverse clients and their families upon request from County, including:
  - 1. The number of Bilingual and Bicultural staff (as part of the quarterly staffing report), and the number of culturally diverse clients receiving Program services; and
  - 2. Efforts aimed at providing culturally competent services such as trainings provided to staff, changes or adaptations to service protocol, community education/outreach, etc.
- B. At all times, the Contractor's Program(s) shall be staffed with personnel who can communicate in the client preferred language, or Contractor shall provide interpretation services, including American Sign Language (ASL).
- C. Contractor will strive to fill direct service positions with bilingual staff in County's threshold language (Spanish) that is reflective of the specific needs of each region. Contractor percentage goals are calculated based on U.S. Census language data by region: Santa Barbara service area (including Goleta and Carpinteria) – 30%; Santa Maria service area (including Orcutt and Guadalupe) – 48%; Lompoc service area (including Buellton and Solvang) – 33%.
- D. Contractor shall provide services that consider the culture of mental illness, as well as the ethnic and cultural diversity of clients and families served; materials provided to the public must also be printed in Spanish (threshold language).
- E. Services and programs offered in English must also be made available in Spanish, if clients identify Spanish as their preferred language, as specified in subsection B above.
- F. As applicable, a measurable and documented effort must be made to conduct outreach to and to serve the underserved and the non-served communities of Santa Barbara County.
- G. Contractor shall establish a process by which Spanish speaking staff who provide direct services in Spanish or interpretive services are tested for proficiency in speaking, reading, and writing Spanish language.

## **11. NOTIFICATION REQUIREMENTS.**

- A. Contractor shall immediately notify Quality Care Management (QCM) at 805-681-5113 in the event of:
  - 1. Known serious complaints against licensed/certified staff;
  - 2. Restrictions in practice or license/certification as stipulated by a State agency;

3. Other action instituted which affects staff's license/certification or practice (for example, sexual harassment accusations); or
  4. Any event triggering Incident Reporting, as defined in Department of Behavioral Wellness Policy and Procedure #28, Unusual Occurrence Incident Report.
- B.** Contractor shall immediately contact the Department of Behavioral Wellness Compliance Hotline (805-884-6855) should any of the following occur:
1. Suspected or actual misappropriation of funds under Contractor's control
  2. Legal suits initiated specific to the Contractor's practice;
  3. Initiation of criminal investigation of the Contractor; or
  4. HIPAA breach.
- C.** For clients receiving direct services from both Behavioral Wellness and Contractor staff, Contractor shall immediately notify the client's Behavioral Wellness Case Manager or other Behavioral Wellness staff involved in the client's care, or the applicable Regional Manager should any of the following occur:
1. Side effects requiring medical attention or observation;
  2. Behavioral symptoms presenting possible health problems; or
  3. Any behavioral symptom that may compromise the appropriateness of the placement.
- D.** Contractor may contact [bwelcontractsstaff@co.santa-barbara.ca.us](mailto:bwelcontractsstaff@co.santa-barbara.ca.us) for any contractual concerns or issues.
- E.** "Immediately" means as soon as possible but in no event more than twenty-four (24) hours after the triggering event. Contractor shall train all personnel in the use of the Department of Behavioral Wellness Compliance Hotline (Phone number: 805-884-6855).

## **12. REPORTS.**

- A.** Contractor shall maintain records and make statistical reports monthly or as required by County and the State Department of Health Care Services or applicable agency, on forms provided by either agency to include but not limited to the following information:
1. Number of beds used daily;
  2. Demographics of clients;
  3. Client Referral Source;
  4. Client census; and
  5. Length of stay.
- B.** Upon County's request, Contractor shall make additional reports as required by County concerning Contractor's activities as they affect the services hereunder. County will be specific as to the nature of information requested and allow thirty (30) days for Contractor to respond.

- C. Upon County's request, Contractor shall make additional reports as required by County concerning Contractor's activities as they affect the services hereunder. County will be specific as to the nature of information requested and allow thirty (30) days for Contractor to respond.
- D. Annual Mandatory Training Report.** Contractor shall submit evidence of completion of the Mandatory Trainings identified in the Section regarding Training Requirements on an annual basis to the County Systems Training Coordinator. Training materials, competency tests, and sign-in sheets shall be submitted for each training no later than June 15th of each year unless requested earlier by County.
- E. Additional Reports.** Contractor shall maintain records and make statistical reports as required by County and DHCS or other government agency, on forms provided by or acceptable to the requesting agency. In addition to reports required under this Agreement, upon County's request, Contractor shall make additional reports as required by County concerning Contractor's activities as they affect the services hereunder. County will be specific as to the nature of information requested and allow thirty (30) days for Contractor to respond.

### **13. COLLABORATIVE MEETINGS.**

Behavioral Wellness shall conduct a Collaborative Meeting at least annually, and more frequently, if needed, with Contractor to collaboratively discuss Programmatic, Fiscal, and Contract matters.

### **14. TRAINING REQUIREMENTS.**

- A. Contractor shall ensure that all staff completes mandatory trainings per County's "Mandatory Training" policy. The following trainings must be completed at hire and annually thereafter;
  - 1. Code of Conduct;
  - 2. Consumer and Family Culture;
  - 3. Cultural Competency; and
  - 4. HIPAA.

### **15. ADDITIONAL PROVISIONS.**

- A. Contractor agrees to hold harmless the State and beneficiaries in the event the County cannot or does not pay for services performed by the contractor.
- B. The Contractor will not discriminate against beneficiaries on the basis of health status or need for health care services, pursuant to 42 C.F.R. § 438.6(d)(3).
- C. Contractor agrees to comply with all applicable federal and state law, particularly the statutes and regulations incorporated by reference below. Contractor agrees to comply with any changes to these statutes and regulations that may occur during the contract period and any new applicable statutes or regulations, but either the County or Contractor may request consultation and discussion of new or changed statutes or regulations, including whether contract amendments may be necessary.

**EXHIBIT B**  
**FINANCIAL PROVISIONS**

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## EXHIBIT B

### FINANCIAL PROVISIONS- MHS

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(Applicable to the program described in Exhibit A-1)

(With attached Exhibit B-1 MHS, Schedule of Rates and Contract Maximum)

This Agreement provides for services to be rendered under this contract, Contractor shall be paid at the rate specified in the Schedule of Rates (Exhibit B-1 MHS), with a maximum contract amount not to exceed the value on the B-1 MHS Schedule of Rates.

#### **I. PAYMENT FOR SERVICES.**

A. Payment for services and/or reimbursement of costs shall be made upon Contractor's satisfactory performance, based upon the scope and methodology contained in Exhibit A MHS. Payment for services shall be based upon the expenses as defined in Exhibit B-1 MHS (Schedule of Rates). Invoices submitted for payment that are based upon Exhibit B-1 MHS must contain sufficient detail and provide supporting documentation to enable an audit of the charges.

The invoice must show the Purchase Agreement number, the number of bed days billed, the actual bed days utilized by client, and the rate.

B. Non-Medi-Cal Billable Services. County recognizes that the services provided by Contractor's Program, described in Exhibit A MHS, may not be reimbursable by Medi-Cal, and such services may be reimbursed by other County, State, and Federal funds to the extent specified in Exhibit B-1 MHS and pursuant to Paragraph I.A of this Exhibit B MHS. Funds for these services are included within the Maximum Contract Amount.

#### **II. MAXIMUM CONTRACT AMOUNT.**

The Maximum Contract Amount of this Agreement shall not exceed **\$867,240** inclusive of Mental Health funding in the amount of \$289,080 annually per fiscal year for the period of July 1, 2020 through June 30, 2023, and shall consist of County, State, and/or Federal funds as shown in Exhibit B-1-MHS and subject to the provisions in Section I. Notwithstanding any other provision of this Agreement, in no event shall County pay Contractor more than this Maximum Contract Amount for Contractor's performance hereunder without a properly executed amendment.

#### **III. ACCOUNTING FOR REVENUES.**

A. Internal Procedures. Contractor shall maintain internal financial controls which adequately ensure proper billing and collection procedures. Contractor shall pursue payment from all potential sources in sequential order, with Medi-Cal as payor of last resort. All fees paid by or on behalf of patients/clients receiving services under this Agreement shall be utilized by Contractor only for the delivery of service units specified in Exhibit A and B-1 to this Agreement. This Agreement does not preclude the Contractor from pursuing or obtaining additional funding to cover the cost of unmet services expenses under this Agreement.

#### IV. BILLING AND PAYMENT PROCEDURES AND LIMITATIONS.

##### A. Submission of Claims and Invoices.

1. Monthly, Contractor shall submit to County's DESIGNATED REPRESENTATIVE an invoice or certified claim on the County treasury for the service performed over the period specified. In addition, Contractor shall submit an accompanying monthly Behavioral Wellness bed occupancy census report to include the first, last name and date of birth of the client with the occupancy rate. County's representative shall evaluate the quality of the service performed, and if found to be satisfactory, shall initiate payment processing. County shall pay invoices or claims for satisfactory work within thirty (30) days of presentation.

B. Within 20 calendar days of the end of the month in which services are delivered, Contractor shall submit monthly financial statements reflecting direct and indirect costs and other applicable revenues for Contractor's programs described in Exhibit A MHS.

C. Withholding Of Payment for Non-submission of Information. If any required invoice or report(s) is not submitted by Contractor to County within the time limits described in this Agreement or if any such information is incomplete, incorrect, or is not completed in accordance with the requirements of this Agreement, then payment shall be withheld until County is in receipt of complete and correct data.

1. Submit to County's Designate Representative:

[financebo@sbcbswell.org](mailto:financebo@sbcbswell.org)

Santa Barbara County Department of Behavioral Wellness

ATTN: Accounts Payable

429 North San Antonio Road

Santa Barbara, CA 93110-1316

Contractor agrees that it shall be solely liable and responsible for all data and information submitted to the County and submitted by the County to the State on behalf of Contractor.

2. The Program Contract Maximums specified in Exhibit B-1-MHS and this Exhibit B MHS are intended to cover services during the entire term of the Agreement, unless otherwise specified in Exhibit A to this Agreement (such as time-limited or services tied to the school year). Under no circumstances shall Contractor cease services prior to June 30 due to an accelerated draw down of funds earlier in the Fiscal Year. Failure to provide services during the entire term of the Agreement may be considered a breach of contract and subject to the Termination provisions specified in the Agreement.

The Director or designee shall review the monthly claim(s) and invoices to confirm accuracy of the data submitted. With the exception of the final month's payment under this Agreement, County shall make provisional payment for approved claims within thirty (30) calendar days of the receipt of said claim(s) and invoice by County subject to the contractual limitations set forth in this Agreement and all exhibits hereto.

D. Overpayments: Any overpayments of contractual amounts must be returned via direct payment within 30 days to the County. County may withhold amounts from future payments due to Contractor under this Agreement or any subsequent agreement if Contractor fails to make direct payment within required timeframe.



**V. COST REPORT.**

- A. Audited Financial Reports:** Each year of the Agreement, the Contractor shall submit to County a copy of their audited annual financial statement, including management comments. This report shall be submitted within thirty (30) days after the report is received by Contractor.
- B. Single Audit Report:** If Contractor is required to perform a single audit and/or program specific audit, per the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (45 CFR Part 75), of Federal Awards, Contractor shall submit a copy of such single audit to County within thirty (30) days of receipt.

**VI. AUDITS, AUDIT APPEALS AND POST-AUDIT FINAL SETTLEMENT:**

- A. Audit by Responsible Auditing Party.** At any time during the term of this Agreement or after the expiration or termination of this Agreement, in accordance with State and Federal law including but not limited to WIC Sections 14170 et. seq., authorized representatives from the County, State or Federal governments (Responsible Auditing Party) may conduct an audit or site review of Contractor regarding the mental health services/activities provided under this Agreement.
- B. Settlement.** Settlement of the audit findings will be conducted according to the Responsible Auditing Party's procedures in place. Such settlement will take place when the State initiates its settlement action which customarily is after the issuance of the audit report by the State and before the State's audit appeal process.
- C. Invoice for Amounts Due.** County shall issue an invoice to Contractor for any amount due to the County after the Responsible Auditing Party issues an audit report. The amount on the County invoice is due by Contractor to County thirty (30) calendar days from the date of the invoice. However, if the Responsible Auditing Party stays its collection of any amounts due or payable because of the audit findings, County will also stay its settlement of the same amounts due or payable until the Responsible Auditing Party initiates its settlement action with County.
- D. Appeal.** Contractor may appeal any such audit findings in accordance with the audit appeal process established by the Responsible Auditing Party performing the audit.

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**EXHIBIT B-1- MHS**

**SCHEDULE OF RATES AND CONTRACT MAXIMUM**

(Applicable to programs described in Exhibit A1)

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<u>Type of Service</u>	<u>Units of Service</u>	<u>Unit Rate</u>	<u>Billing Increment</u>
Transitional Housing Mental Health Beds reserved for Behavioral Wellness	22 beds daily	\$36.00 per bed, per day	\$24,090 monthly flat rate
Annual Maximum Contract FY 20-21 not to exceed:			\$289,080
Annual Maximum Contract FY 21-22 not to exceed:			\$289,080
Annual Maximum Contract FY 22-23 not to exceed:			\$289,080
<b>Total Maximum Contract FY 20-23 not to exceed:</b>			<b>\$867,240</b>

**EXHIBIT C**  
**STANDARD**  
**INDEMNIFICATION**  
**AND**  
**INSURANCE PROVISIONS**

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**EXHIBIT C**  
**IDEMNIFICATION AND INSURANCE REQUIRMENTS**  
**(For Professional Contracts)**

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**1. INDEMNIFICATION**

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by County on account of any claim except where such indemnification is prohibited by law. Contractor's indemnification obligation applies to County's active as well as passive negligence but does not apply to County's sole negligence or willful misconduct.

**2. NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**

Contractor shall notify County immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

**3. INSURANCE**

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

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor's profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

**B. Other Insurance Provisions**

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

1. **Additional Insured** – County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
4. **Waiver of Subrogation Rights** – Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.
7. **Verification of Coverage** – Contractor shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The Contractor shall furnish evidence of renewal of coverage throughout the term of the Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of contract.
9. **Subcontractors** – Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.