



LASSEN COUNTY SHERIFF'S OFFICE

1415 Sheriff Cady Lane Susanville, CA 96130

Administration

Phone: (530) 251-8013
Fax: (530) 251-2884

Dispatch

Phone: (530) 257-6121
Fax: (530) 257-9363

Civil

Phone: (530) 251-8014
Fax: (530) 251-2884

Adult Detention Facility

Phone: (530) 251-5245
Fax: (530) 251-5243

Dean F. Growdon
Sheriff - Coroner

To: Lassen County Board of Supervisors

From: John McGarva, Lieutenant

Re: Inmate Health Care Contract

Agenda Date: November 19, 2019

Discussion:

On March 19, 2019 The Lassen County Board of Supervisors awarded an RFP to Wellpath. The Wellpath proposal included health care services for incarcerated adults in the Lassen County Jail. The board authorized the County Administrative Officer to begin negotiating with Wellpath to develop a formal contract. The Sheriff's Office, County Counsel's Office, and the CAO's Office; in conjunction with Wellpath have developed a comprehensive agreement. The term of the proposed agreement is the period of July 1, 2019 through June 30, 2024.

This proposal will meet the minimum requirements for adult inmates and juvenile wards as prescribed in the California Code of Regulations, Title 15. However, it is important to note the continuous changes in this area of law. Inmate health care is heavily litigated. Accordingly, there have been many court interpretations that have continually raised the expectations for inmate health services. The standard of care for inmates is a constantly changing. Although this contract is sufficient by "today's" standard, it is impossible to predict when that standard will change. If (when) that occurs, this contract may need to be modified to meet higher expectations.

Fiscal Impact: From Public Safety-Sheriff Jail Fund/Budget Unit no. 130-0525 estimated cost of \$1,430,149 for the first year with an annual increase of 3% for each subsequent year.

Recommendation: Authorize the CAO to sign the contract.

AGREEMENT FOR INMATE HEALTH CARE SERVICES
at Lassen County, California
Effective December 1, 2019 through November 30, 2024

This Agreement for Inmate Health Care Services (hereinafter, the "Agreement") entered into by and between the County of Lassen, a political subdivision in the State of California (hereinafter, the "County"), acting by and through its duly elected Board of County Commissioners, and California Forensic Medical Group, Inc. ("CFMG").

RECITALS

WHEREAS, the County and the duly elected Sheriff (hereinafter, the "Sheriff") are charged by law with the responsibility for administering, managing, and supervising the health care delivery system of the Lassen County Detention Facility located at 1405 Sheriff Cady Lane, Susanville, California 96130 (hereinafter, the "Facility"); and

WHEREAS, the objective of the County is to provide for the delivery of quality health care to the Inmates and Detainees of the Facility (hereinafter, "Facility Population"), in accordance with applicable law; and

WHEREAS, CFMG is in the business of administering correctional health care services and desires to administer such services on behalf of the County to the Facility Population under the terms and conditions hereof.

NOW, THEREFORE, in consideration of the covenants and promises hereinafter made, the Parties hereto agree as follows:

DEFINITIONS

Contract Year – The initial, and any successive, twelve (12) month period beginning with the effective date of the Agreement.

County Inmates/Detainees – An Inmate/Detainee held under the jurisdiction of the County or Sheriff. County Inmates/Detainees may be housed in the Facility or in another jurisdiction's correctional facility. However, County Inmates/Detainees housed in another jurisdiction are not covered by the provisions of this Agreement unless CFMG administers health care services at the other jurisdiction's facility and is specifically set forth below.

Covered Persons – An Inmate/Detainee of the Facility who is: (1) part of the Facility's MADP; and (2) Fit for Confinement; and (3)(a) incarcerated in the Facility; or (b) on work release status. NOTE: Covered Persons include Other County Inmates/Detainees for purposes of delivery of basic health care services, however, the cost of certain services provided to Other County Inmates/Detainees are borne by the County as set forth in Section 5.0.

Detainee – An adult individual whose sentence has not yet been adjudicated and is held as a pre-trial detainee or other individual held in lawful custody.

Fit for Confinement – A determination made by CFMG authorized personnel that an Inmate/Detainee is medically stable and has been medically cleared for acceptance into the Facility. Such determination shall only be made after resolution of any injury or illness requiring immediate transportation and treatment at a hospital or similar facility.

Health Care Staff – Medical, mental health and support staff provided or administered by CFMG.

CFMG Chief Clinical Officer – CFMG's chief physician who is vested with certain decision making duties under this Agreement.

Inmate – An adult individual who is being incarcerated for the term of their adjudicated sentence.

Monthly Average Daily Population (“MADP”) – The average number of Inmates/Detainees housed in the Facility on a daily basis for the period of one month. The MADP shall include, but separately list, Other County Inmates/Detainees. The MADP shall be figured by summing the daily population for the Facility and Other County Inmates/Detainees (as determined by a count performed at the same time each day) for each day of the month and dividing this sum by the total number of days in the month. Facility records shall be made available to CFMG upon request to verify the MADP. Persons on home confinement, housed outside of the Facility, and parolees and escapees shall not be considered part of the Facility’s MADP.

NCCHC – The National Commission on Correctional Health Care.

Other County Inmate/Detainee – An Inmate/Detainee under the jurisdiction of another county, state or federal agency, who is being housed in the Facility.

Physician Extender – An advanced level healthcare professional such as a Nurse Practitioner, Physician Assistant, or Clinical Nurse Specialist.

Specialty Services – Medical services that require physicians to be licensed in a specialty such as obstetrics, gynecology, or dermatology or other specialized field of medicine, excluding services that are otherwise provided for in this Agreement.

ARTICLE I

HEALTH CARE SERVICES

- 1.0 SCOPE OF SERVICES. CFMG shall administer health care services and related administrative services at the Facility according to the terms and provisions of this Agreement. The costs of the various health care services shall be borne by CFMG or the County as set forth in this Article.
- 1.1 GENERAL HEALTH CARE SERVICES. CFMG will arrange and bear the cost of the following health care services:
 - 1.1.1 RECEIVING SCREENING. A receiving screening of a Covered Person shall be performed as soon as possible after the Covered Person’s booking into the Facility, not to exceed twenty-four (24) hours after the Covered Person’s arrival at the Facility.
 - 1.1.1 HEALTH ASSESSMENT. A health assessment of a Covered Person shall be performed as soon as possible, but no later than seven (7) calendar days after the Inmate/Detainee’s arrival at the Facility. The health assessment shall follow current NCCHC guidelines.
 - 1.1.2 SCHEDULED SICK CALL. A qualified healthcare professional shall conduct sick calls for Covered Persons on a timely basis and in a clinical setting.
- 1.2 EMERGENCY TRANSPORTATION. CFMG shall arrange for emergency transportation services for Covered persons and shall bear the cost of such services subject to the limits specified in Section 1.18. Notwithstanding anything to the contrary herein contained, subject to Section 1.18’s

limitations, CFMG shall only be responsible for costs associated with air ambulance services not to exceed three trips per Contract Year.

- 1.3 BODY CAVITY SEARCHES/COLLECTION OF PHYSICAL EVIDENCE. CFMG Health Care Staff will not perform body cavity searches, nor collect physical evidence (blood, hair, semen, saliva, etc.).
- 1.4 DENTAL – ORAL SCREENING ONLY. CFMG shall arrange and bear the cost of oral screening (as defined by NCCHC guidelines) of all Covered Persons. Cost for any and all other dental services required by the Facility Population shall be administered in accordance with Section 1.18.
- 1.5 ELECTIVE MEDICAL CARE – NOT COVERED. CFMG shall not be responsible for the provision or cost of any elective care. In the event a member of the Facility Population requires elective care, the Inmate/Detainee or County shall be responsible for all costs. Elective medical care shall be defined as care which, if not provided, would not, in the sole opinion of CFMG's Chief Clinical Officer or designee, cause the Inmate/Detainee's health to deteriorate or cause harm to the Inmate/Detainee's wellbeing. Decisions concerning elective medical care shall be consistent with the applicable American Medical Association (AMA) Standards.
- 1.6 HOSPITALIZATION. Should hospitalization be deemed medically necessary for a member of the Facility Population in the opinion of CMGC's Chief Clinical Officer or designee, CFMG shall arrange and bear the cost of such services in accordance with Section 1.18.
- 1.7 LONG TERM CARE – NOT COVERED. CFMG shall not be responsible for the provision or cost of any long term care facility services. In the event that a member of the Facility Population requires skilled care, custodial care or other services of a long term care facility, the County shall bear the cost.
- 1.8 MENTAL HEALTH CARE. CFMG shall arrange and bear the cost of on-site mental health services for Covered Persons which shall consist of evaluations, referrals, crisis management, suicide intervention, individual therapy, basic community linkage, and continuity of care. CFMG shall not be responsible for the provision or cost of any off-site or inpatient mental health services. The County shall be responsible for the provision and cost of off-site or inpatient mental health services for the Facility Population.
- 1.9 PATHOLOGY/RADIOLOGY SERVICES. CFMG shall provide onsite pathology and radiology services to the extent reasonably possible. In the event that any pathology or radiology services are required for the Facility Population and cannot reasonably be rendered onsite, the cost of such offsite services shall be administered in accordance with Section 1.18.
- 1.10 PREGNANT COVERED PERSONS. CFMG shall arrange and bear the cost of on-site health care services for any pregnant Covered Person in accordance with NCCHC standards and this Agreement, but CFMG shall not arrange or bear the cost of any health care services for infants. To the extent off-site health care services are required for any pregnant Covered Person, CFMG shall make appropriate arrangements for rendering such care, but the cost of such off- site services shall be borne by the County.
- 1.11 SPECIALTY SERVICES. In the event Specialty Services are required in the discretion of CFMG's Chief Clinical Officer or designee, CFMG shall arrange for the provision of offsite specialty services. Costs for such services shall be administered in accordance with Section 1.18.

- 1.12 VISION CARE. CFMG shall provide adult Inmates with vision examinations and, as deemed necessary for participating in legal defense or when the health and/or wellbeing of an Inmate would otherwise be adversely affected provide the Inmate with prescription corrective eyeglasses. CFMG shall be responsible for the replacement or repair of broken corrective eyeglasses belonging to an inmate not to exceed two pair per year per Inmate.
- 1.13 OFFICE EQUIPMENT – NOT COVERED. CFMG shall not be responsible for the provision or cost of any office equipment. The County shall be responsible for providing office equipment, such as copier, fax and phone service required for the administrative operation of the medical unit.
- 1.14 OFFICE SUPPLIES. CFMG shall be responsible for providing office supplies such as books, medical record folders, and forms as required for the administrative operations of the medical unit.
- 1.15 MEDICAL SUPPLIES/EQUIPMENT OF \$500 OR LESS. CFMG shall provide and bear the cost of medical supplies (i.e. alcohol prep pads, syringes, etc.) and equipment (i.e. thermometers, scales, etc.) required to administer the terms of the Agreement, which have a unit cost of \$500 or less, but does not include office and paper supplies.
- 1.16 MEDICAL WASTE. CFMG shall arrange and bear the cost of removing and properly disposing of medical waste material generated while fulfilling its duties under this Agreement in accordance with all applicable state laws and OSHA-regulated standards.
- 1.17 PHARMACY SERVICES. CFMG shall provide monitoring of pharmacy usage as well as a Preferred Medication List. Except as provided below, CFMG shall bear the cost of all prescription and non-prescription over-the-counter medications prescribed by a duly licensed CFMG physician for a Covered Person.
- 1.17.1 GENERAL. Prescribing, dispensing, and administering of medication shall comply with all State and Federal laws and regulations and all medications shall be dispensed under the supervision of a duly authorized, appropriately licensed or certified health care provider.
- 1.17.2 EXCEPTIONS. CFMG shall not be responsible for the cost of prescription medications related to the treatment of Acquired Immune Deficiency Syndrome ("AIDS"), Human Immuno-deficiency Virus ("HIV"), Hepatitis C, organ transplants and neuromuscular disease, and Biological medications. Medications related to the treatment of AIDS, HIV, Hepatitis C, organ transplants and neuromuscular disease, and Biological medications shall be defined in accordance with the Physician's Desk Reference.
- 1.18 FINANCIAL LIMITATIONS. CFMG's maximum liability for costs associated with the provision of off-site medical services or other healthcare services which include, but are not limited to, the services in Paragraphs 1.2, 1.4, 1.6, 1.9, and 1.11 shall be \$10,000.00 per patient per episode (the "Cap Amount"). Costs for any medical or other health services, as set forth above, which are provided to Inmates/Detainees during the Contract Year which are in excess of the Cap Amount shall be the responsibility of the County. When the Cap Amount for any respective patient is reached, CFMG will continue to provide utilization management, extend all provider discounts to the County and pay these expenses on behalf of the County, as long as the County remains current with payments due under this Agreement. Amounts paid by CFMG which are over the Cap Amount will be periodically reconciled with the County pursuant to Paragraph 8.1.

ARTICLE II
HEALTH CARE STAFF

- 2.0 STAFFING HOURS. CFMG shall provide or arrange for the provision of Health Care Staff necessary to render the health care services contemplated in Article I as set forth in the staffing plan set forth in Exhibit A, attached hereto and made a part hereof. CFMG reserves the right to assign the staff in Exhibit A to shift coverage as necessary based on operation needs to provide the health care services under this Agreement.
- 2.0.1 Additional hours may be provided if mutually agreed upon by both Parties in writing, with at least 24 hours advanced notice.
- 2.0.2 CFMG shall provide or arrange for the provision of an on-call Physician Extender available by telephone or pager 24 hours per day and 7 days per week.
- 2.0.3 CFMG shall make reasonable efforts to supply the staffing levels contained in this section, however, failure to continuously supply all of the required staffing due to labor market demands or other factors outside the control of CFMG, after such reasonable efforts have been made, shall not constitute a breach of this Agreement.
- 2.1 STAFFING LEVELS WAIVER. Based on actual staffing needs as affected by medical emergencies, riots, increased or decreased Inmate/Detainee population, and other unforeseen circumstances, certain increases or decreases in staffing requirements may be waived as agreed to by the County and CFMG.
- 2.2 STAFF SCREENING. The County shall screen CFMG's proposed Health Care Staff, employees, agents and/or subcontractors providing services at the Facility to ensure they do not constitute a security risk. The County shall have final approval of CFMG's Health Care Staff, employees, agents and/or subcontractors in regards to security/background clearance.
- 2.3 SATISFACTION WITH HEALTH CARE STAFF. In recognition of the sensitive nature of correctional facility operations, if the County becomes dissatisfied with any member of the Health Care Staff, the County shall provide CFMG written notice of such dissatisfaction and the reasons therefore. Following receipt of such notice, CFMG shall use commercially reasonable efforts to resolve the dissatisfaction. If the problem is not resolved to the satisfaction of the County within ten (10) business days following CFMG's receipt of the notice, CFMG shall remove the individual from providing services at the Facility within a reasonable time frame considering the effects of such removal on CFMG's ability to deliver health care services and recruitment/hiring of an acceptable replacement. The County reserves the right to revoke the security clearance of any Health Care Staff at any time.

ARTICLE III
ADMINISTRATIVE SERVICES

- 3.0 UTILIZATION MANAGEMENT. CFMG shall provide utilization management services and administer Pharmacy services as set forth in Article I, on behalf of the County. CFMG will follow applicable state laws and make reasonable efforts to obtain provider discounts and will keep the County and/or Sheriff apprised of its utilization management practices.

- 3.1 HEALTH AND MENTAL HEALTH EDUCATION AND TRAINING. CFMG shall conduct an ongoing health and mental health education and training program for the County Deputies and Jailers in accordance with the needs mutually established by the County and CFMG.
- 3.2 QUARTERLY REPORTS. As requested by the Sheriff, CFMG shall submit quarterly health care reports concerning the overall operation of the health care services program rendered pursuant to this Agreement and the general health of the Facility Population.
- 3.3 QUARTERLY MEETINGS. As requested by the Sheriff, CFMG shall meet quarterly, or as soon thereafter as possible, with the Sheriff, or designee, concerning health care services within the Facility and any proposed changes in health-related procedures or other matters, which both Parties deem necessary.
- 3.4 MEDICAL RECORDS MANAGEMENT. CFMG shall provide the following medical records management services:
 - 3.4.1 MEDICAL RECORDS. CFMG Health Care Staff shall maintain, cause or require the maintenance of complete and accurate medical records for Covered Persons who have received health care services. Medical records shall be kept separate from Covered Person's confinement records. A complete copy of the individual medical record shall be available to accompany each Covered Person who is transferred from the Facility to another location for off-site services or transferred to another institution. CFMG will keep medical records confidential and shall not release any information contained in any medical record except as required by published Facility policies, by a court order or by applicable law. Upon termination of this Agreement, all medical records shall be delivered to and remain with the Sheriff, as property of the Sheriff's office.
 - 3.4.2 COMPLIANCE WITH LAWS. Each medical record shall be maintained in accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and any other applicable state or federal privacy statute or regulation.
 - 3.4.3 RECORDS AVAILABILITY. As needed to administer the terms of this Agreement, CFMG shall make available to the Sheriff or County, unless otherwise specifically prohibited, at the Sheriff's or County's request, all records, documents and other papers relating to the direct delivery of health care services to the Facility Population hereunder.

ARTICLE IV

PERSONS COVERED UNDER THIS AGREEMENT

- 4.0 GENERAL. Except as otherwise provided in this Agreement, CFMG shall only be required to arrange for health care services under this Agreement to be provided to Covered Persons.
- 4.1 EMERGENCY MEDICAL CARE FOR JAIL EMPLOYEES AND VISITORS. CFMG shall arrange for on-site first response emergency medical care as required for Facility employees, contractors and visitors to the Facility. The medical treatment shall be limited to the extent reasonably necessary to stabilize and facilitate the individual's referral to a medical facility or personal physician.
- 4.2 RELEASE FROM CUSTODY. The County acknowledges and agrees that CFMG is responsible for the payment of costs associated with services rendered to Covered Persons as set forth in this Agreement only when such persons remain in the custody of, or under the jurisdiction of, the

Facility. In no event shall CFMG be responsible for payment of any costs associated with any services rendered to any individual when said individual is released from the custody of, or no longer under the jurisdiction of, the Facility including, but not limited to, releasees, parolees and escapees. Furthermore, in no event shall CFMG be responsible for payment of costs associated with any medical services rendered to a Covered Person when said Covered Person is injured outside the Facility facility during transport to or from the Facility.

ARTICLE V

PERSONS NOT COVERED OR PARTIALLY COVERED UNDER THIS AGREEMENT

- 5.0 OTHER COUNTY INMATES/DETAINEES. CFMG shall only be responsible for arranging health assessments, sick call, over-the counter medications, medical supplies and medical waste services for Other County Inmates/Detainees. The cost of all prescription medication and all other health care expenses shall be paid by the agency responsible for the Other County Inmate/Detainee, including those services listed in Article I of this Agreement and all other medically-related expenses associated with Other County Inmates/Detainees.
- 5.1 COUNTY INMATES/DETAINEES HOUSED IN OTHER JURISDICTIONS OR OUTSIDE THE FACILITY. CFMG shall not be responsible for arranging the medical care or treatment for County Inmates/Detainees housed in other counties or jurisdictions. The County or Sheriff or other agency with legal responsibility for the medical care of such persons shall be responsible for all medical expenses associated with the care and treatment of County Inmates/Detainees removed from the Facility, including, but not limited to the services listed in Article I of this Agreement and any other health care related expenses associated with said Inmates/Detainees, unless the Inmate/Detainee is housed in a facility where CFMG provides Inmate/Detainee health care services. CFMG shall not be responsible for arranging the medical care or treatment for County Inmates/Detainees housed outside the Facility.
- 5.2 INJURIES PRIOR TO INCARCERATION, FIT FOR CONFINEMENT, AND ESCAPED INMATES/DETAINEES. CFMG shall not be responsible for the cost of providing off-site medical care for injuries incurred by an arrested person prior to incarceration at the Facility or during an escape or escape attempt, including, but not limited to, medical services provided to any arrested person prior to the person's booking and confinement in the Facility. In addition, CFMG shall not be responsible for the cost of any medical treatment or health care services necessary to medically stabilize any arrested person presented at intake by an arresting agency with a life threatening injury or illness or in immediate need of emergency medical care. CFMG shall provide such care as is medically necessary until the arrested person can be transported to a medical care facility by the arresting agency or their designee. The arresting authority or the County shall bear the cost of, and be responsible for, all reasonable and necessary medical services or health care services of the individual until such time as the arresting authority can present a medically stable individual that is Fit for Confinement. To the extent CFMG is billed for medical services provided to an individual who is not Fit for Confinement the County shall reimburse CFMG for all such costs. CFMG shall not charge an additional fee simply to examine an individual to determine if he is suitably Fit for Confinement.

ARTICLE VI

COST OF SERVICES NOT COVERED UNDER THIS AGREEMENT

- 6.0 SERVICES NOT LISTED. Both Parties understand and agree that there will be costs incurred for health care related services as outlined in Articles I, II and III above. CFMG shall not be responsible for any expenses not specifically covered under Articles I, II and III of this Agreement. In the event

that any of the health care services not covered by CFMG under Articles I, II and III, or any services that are not listed within this Agreement, are required for a member of the Facility Population as a result of the medical judgment of a physician or CFMG authorized personnel, CFMG shall not be responsible for arranging such services and the cost of such services shall be billed directly to the County.

- 6.1 SERVICES BEYOND THE SCOPE OF THIS AGREEMENT. Both Parties understand and agree that there are certain occurrences, both beyond the control and within the control of the Parties, that may result in health care expenses which are outside the scope of the normal operation of a correctional facility and, therefore, outside the contemplated scope of services under this Agreement. While both Parties will act in good faith and endeavor to reduce the possibility of such occurrences, in the unlikely event of an occurrence such as an Act of God, riot, explosion, fire, food poisoning, epidemic illness outbreak or any other catastrophic event, or an event caused by the action or inaction of the County or Sheriff or their employees, agents or contractors, which results in medical care for the Facility Population, Facility staff, visitors, or contractors, CFMG shall not be responsible for costs attributable to such catastrophic event and all such costs shall be borne by the County. Notwithstanding the above, CFMG shall be responsible for medical costs under this Agreement associated with such an event only if such an event was caused solely by CFMG.

ARTICLE VII

COUNTY'S DUTIES AND OBLIGATIONS

- 7.0 COMPLIANCE WITH HIPAA/STATE HEALTH INFORMATION PRIVACY LAWS. The County, Facility, and Sheriff and their employees, agents and subcontractors shall comply with the Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPAA") and any State health information privacy laws, to the extent they are applicable. The County and the Sheriff shall implement policies and/or procedures in compliance with such laws.
- 7.1 COMPREHENSIVE MEDICAL/MENTAL HEALTH CARE. CFMG shall identify to the Sheriff those members of the Facility Population with medical or mental health conditions which may be worsened as a result of being incarcerated at the Facility or which may require extensive care while incarcerated. After review of the circumstances, and when security risks permit, the Sheriff shall make every effort to have such an Inmate/Detainee released, transferred or otherwise removed from the correctional setting.
- 7.2 RECORD ACCESS. During the term of this Agreement, and for a reasonable time following the termination of this Agreement, the Sheriff shall provide CFMG, at CFMG's request, the County, Facility and/or Sheriff's records (including medical records) relating to the provision of health care services to the Facility Population, including records maintained by hospitals, and other outside health care providers involved in the care or treatment of the Facility Population (to the extent the County, Facility or Sheriff has control of, or access to, such records). CFMG may request such records in connection with the investigation of, or defense of, any claim by a third party related to CFMG's conduct or to prosecute a claim against a third party. Any such information provided by the Sheriff to CFMG that the Sheriff considers confidential shall be kept confidential by CFMG and shall not, except as may be required by law, be distributed to any third party without prior written approval by the Sheriff.
- 7.3 USE OF INMATES/DETAINEES IN THE PROVISION OF HEALTH CARE SERVICES. Inmates/Detainees of the Facility shall not be employed or otherwise engaged or utilized by either CFMG or the Sheriff in rendering any health care services to the Facility Population, provided however, that Inmates/Detainees may be used in positions not involving the rendering of health

care services directly to the Facility Population and not involving access to Facility Population records in accordance with NCCHC standards.

- 7.4 SECURITY OF THE FACILITY AND CFMG. CFMG and the County understand that adequate security services are necessary for the safety of the agents, employees, and subcontractors of CFMG, as well as for the security of the Facility Population and Sheriff's staff, consistent with a correctional setting. The Sheriff shall provide security sufficient to enable CFMG, its Health Care Staff, employees, agents and/or subcontractors to safely provide the health care services described in this Agreement. CFMG, its Health Care Staff, employees, agents and/or subcontractors shall follow all security procedures of the Sheriff while at the Facility or other premises under the Sheriff's direction or control. However, any CFMG Health Care Staff, employee, agent and/or subcontractor may, at any time, refuse to provide any service required under this Agreement if such person reasonably feels that the current safety services are insufficient. CFMG shall not be liable for any loss or damages resulting from CFMG's Health Care Staff, employees, agents and/or subcontractors failure to provide medical services due to insufficient security services.
- 7.5 SHERIFF'S POLICIES AND PROCEDURES. CFMG, its Health Care Staff, employees, agents and/or subcontractors shall operate within the requirements of the County's and/or Sheriff's posted security Policies and Procedures, which impact the provision of medical services.
- 7.5.1 A complete set of said Policies and Procedures shall be maintained by the County and made available for inspection by CFMG at the Facility, and CFMG may make a reasonable number of copies of any specific section(s) it wishes using the Sheriff's photocopy equipment and paper.
- 7.5.2 Any Policy or Procedure that may impact the provision of health care services to the Facility Population which has not been made available to CFMG shall not be enforceable against CFMG unless otherwise agreed upon by both Parties.
- 7.5.3 Any modification of the posted Policies and Procedures shall be timely provided to CFMG. CFMG, its Health Care Staff, employees, agents and/or subcontractors shall operate within the requirement of a modified Policy or Procedure after such modification has been made available to CFMG.
- 7.5.4 If any of the County and/or Sheriff's Policies and Procedures specifically relate to the delivery of medical services, the County and/or Sheriff's representative and CFMG shall review the County and/or Sheriff's Policies and Procedures and modify or remove those provisions that conflict with CFMG's Facility Health Care Policies and Procedures.
- 7.6 DAMAGE TO EQUIPMENT. CFMG shall not be liable for loss of or damage to equipment and supplies of CFMG, its agents, employees or subcontractors if such loss or damage was caused by the negligence of the County and/or Sheriff's employees.
- 7.7 SECURE TRANSPORTATION. The Sheriff shall provide security as necessary and appropriate in connection with the transportation of a member of the Facility Population to and from off-site services including, but not limited to, Specialty Services, hospitalization, pathology and radiology services as requested by CFMG. CFMG shall coordinate with the Sheriff's office for transportation to and from the off-site services provider or hospital.
- 7.8 OFFICE EQUIPMENT AND SUPPLIES. The Sheriff shall provide use of County-owned office equipment, supplies and all necessary utilities (including telephone and fax line service) in place at

the Facility health care facilities unless otherwise state in Paragraph 1.14. At the termination of this Agreement, CFMG shall return to the County possession and control of all County- owned medical and office equipment. At such time, the office equipment shall be in good working order, reasonable wear and tear excepted.

- 7.9 NON-MEDICAL CARE OF FACILITY POPULATION. It is understood that the Sheriff shall provide for all the non-medical personal needs and services of the Facility Population as required by law. CFMG shall not be responsible for providing, or liable for failing to provide, non-medical services to the Facility Population including, but not limited to, daily housekeeping services, dietary services, building maintenance services, personal hygiene supplies and services and linen supplies.
- 7.10 FACILITY POPULATION INFORMATION. In order to assist CFMG in providing the best possible health care services to Covered Persons, the Sheriff shall provide, as needed, information pertaining to the Covered Person that CFMG and the Sheriff mutually identify as reasonable and necessary for CFMG to adequately perform its obligations under this Agreement.

ARTICLE VIII **COMPENSATION AND ADJUSTMENTS**

- 8.0 ANNUAL AMOUNT/MONTHLY PAYMENTS. The base amount to be paid by the County to CFMG is \$1,388,646.00 for a period of 12 months, payable in equal monthly installments. Each monthly installment shall be at \$115,720.50, pro-rated for any partial months and subject to any reconciliations as set forth below. The first monthly amount is to be paid to CFMG on December 1, 2019 for services administered in the month of December, 2019. Each monthly payment thereafter is to be paid by the County to CFMG before or on the 1st day of the month of the month of service.
- 8.0.1 CONTRACT YEAR TWO. The base amount to be paid by the County to CFMG beginning December 1, 2020 is \$1,430,149.00 for a period of 12 months, payable in equal monthly installments. Each monthly installment shall be at \$119,179.08, pro-rated for any partial months and subject to any reconciliations as set forth below.
- 8.0.2 CONTRACT YEAR THREE. The base amount to be paid by the County to CFMG beginning December 1, 2021 is \$1,472,897.00 for a period of 12 months, payable in equal monthly installments. Each monthly installment shall be at \$122,741.42, pro-rated for any partial months and subject to any reconciliations as set forth below.
- 8.0.3 CONTRACT YEAR FOUR. The base amount to be paid by the County to CFMG beginning December 1, 2022 is \$1,516,927.00 for a period of 12 months, payable in equal monthly installments. Each monthly installment shall be at \$126,410.58, pro-rated for any partial months and subject to any reconciliations as set forth below.
- 8.0.4 CONTRACT YEAR FIVE. The base amount to be paid by the County to CFMG beginning December 1, 2023 is \$1,562,278.00 for a period of 12 months, payable in equal monthly installments. Each monthly installment shall be at \$130,189.83, pro-rated for any partial months and subject to any reconciliations as set forth below.
- 8.1 QUARTERLY RECONCILIATION PROCESS. CFMG will provide a quarterly reconciliation with the County for any amounts owed by either Party pursuant to the terms of this Agreement, including, but not limited to:

8.1.1 ADJUSTMENT FOR MADP. For each month reconciled, if the Facility's MADP is greater than 124 Inmates/Detainees, the compensation payable to CFMG by the County shall be increased by the number of Inmates/Detainees over 124 at the per diem rate of \$6.27. For each month reconciled, if the Facility's MADP is less than 100 Inmates/Detainees, the compensation payable to CFMG by the County shall be decreased by the number of Inmates/Detainees below 100 at the per diem rate of \$6.27.

8.1.2 ADJUSTMENTS FOR COSTS IN EXCESS OF CAP AMOUNTS. The quarterly reconciliation shall include any amounts paid by CFMG in excess of the financial limits listed in this Agreement. The compensation payable to CFMG by the County shall be increased by any costs paid by CFMG in excess of the financial limits listed in Paragraph 1.18.

8.2 ANNUAL INCREASE. On each annual anniversary of the Agreement beginning October 1, 2024, the base amount to be paid by the County to CFMG shall be increased by 3%.

ARTICLE IX

TERM AND TERMINATION

9.0 TERM. The term of this Agreement shall be five (5) years from December 1, 2019 at 12:01 a.m. through November 30, 2024 at 11:59 p.m. This Agreement shall automatically renew for additional one year period on December 1st of each subsequent year with mutually agreed upon increases, unless this Agreement is terminated or notice of termination is given, as set forth in this Article.

9.1 TERMINATION FOR LACK OF APPROPRIATIONS. It is understood and agreed that this Agreement shall be subject to annual appropriations by the County.

9.1.1 Recognizing that termination for lack of appropriations may entail substantial costs for CFMG and the County shall act in good faith and make every effort to give CFMG reasonable advance notice of any potential problem with funding or appropriations.

9.1.2 The compensation paid to CFMG pursuant to this Agreement is based on County's continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, county, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are therefore contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement shall be immediately discharged. County agrees to inform CFMG as soon as possible, but no later than ten (10) calendar days after the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by CFMG arising out of performance of this Agreement must be submitted to County within sixty (60) days after receiving the above notice from the County. In the alternative, County and CFMG may agree, in such circumstance, to a suspension or modification of either party's rights or obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated.

9.2 TERMINATION DUE TO CFMG'S OPERATIONS. The County reserves the right to terminate this Agreement immediately upon written notification to CFMG in the event that CFMG discontinues or abandons operations, is adjudged bankrupt or is reorganized under any bankruptcy

law, or fails to keep in force any required insurance policies. Both Parties agree that termination under this provision will be considered without cause.

9.3 **TERMINATION FOR CAUSE.** The Agreement may be terminated for cause under the following provisions:

9.3.1 **TERMINATION BY CFMG.** Failure of the County to comply with any provision of this Agreement shall be considered grounds for termination of this Agreement by CFMG upon sixty (60) days advance written notice to the County specifying the termination effective date and identifying the “basis for termination.” The County shall pay for services rendered up to the date of termination of the Agreement. Upon receipt of the written notice, the County shall have ten (10) days to provide a written response to CFMG. If the County provides a written response to CFMG which provides an adequate explanation for the “basis for termination” and the County cures the “basis for termination” to the satisfaction of the CFMG, the sixty (60) day notice shall become null and void and this Agreement will remain in full force and effect. Termination under this provision shall be without penalty to CFMG.

9.3.2 **TERMINATION BY COUNTY.** Failure of CFMG to comply with any provision of this Agreement shall be considered grounds for termination of this Agreement by the County who shall provide sixty (60) days advanced written notice specifying the termination effective date and identifying the “basis for termination.” The County shall pay for services rendered up to the date of termination of the Agreement. Upon receipt of the written notice CFMG shall have ten (10) days to provide a written response to the County. If CFMG provides a written response to the County which provides an adequate explanation for the “basis of termination,” or cures the “basis for termination” to the satisfaction of the County, the sixty (60) day notice shall become null and void and this contract will remain in full force and effect. Termination under this provision shall be without penalty to the County.

9.4 **TERMINATION WITHOUT CAUSE.** Notwithstanding anything to the contrary contained in this Agreement, the County or CFMG may, without prejudice to any other rights it may have, terminate this Agreement for their convenience and without cause by giving thirty (30) days’ advance written notice to the other Party.

9.5 **COMPENSATION UPON TERMINATION.** If any of the above termination clauses are exercised by any of the Parties to this Agreement, the County shall pay CFMG for all services rendered by CFMG up to the date of termination of the Agreement regardless of the County’s failure to appropriate funds.

9.6 **PROPERTY DISPOSITION UPON TERMINATION.** Upon termination of this Agreement, CFMG shall be allowed to remove from the Facility any stock medications or supplies purchased by CFMG that have not been used at the time of termination. CFMG shall also be allowed to remove its property from the Facility including its proprietary Policies and Procedures, Manuals, Training Material, and Forms.

ARTICLE X
LIABILITY AND RISK MANAGEMENT

10.0 **INSURANCE COVERAGE.** CFMG shall provide insurance coverage as outlined in Exhibit B. Exhibit B is otherwise incorporated herein by reference.

- 10.1 **ADDITIONAL INSURED ENDORSEMENT.** In the event the County is named as additional insured in conformance with CFMG's policy, such policy will not apply to any liability arising out of the additional insured's own acts or omissions. As to CFMG's defense of a suit arising out of the additional insured's own acts or omissions and those of CFMG, this insurance will act as coinsurance with any other insurance available to the additional insured, in proportion to the limits of liability of all involved policies. However, this insurance does not apply to indemnity of the additional insured for its own acts and omissions, and no insurance policy will increase the extent or scope of the indemnification responsibilities of the Parties as outlined in Section 10.3 below. The naming of an additional insured will not increase the limit of liability under the respective policy.
- 10.2 **INDEMNIFICATION.** The County agrees to indemnify and hold harmless CFMG, its officials, agents, and employees from and against any and all claims, actions, lawsuits, damages, judgments or liabilities of any kind whatsoever caused by, based upon or arising out of any act, conduct, misconduct or omission of County, its agents, employees, or independent contractors (not CFMG). The County agrees to promptly notify CFMG in writing of any incident, claim or lawsuit of which they become aware and shall fully cooperate in the defense of such claim. The County agrees that CFMG's indemnification and defense obligations do not apply for any costs or expenses, including attorney's fees or settlements, incurred or effected prior to written notice to CFMG as set forth above.
- 10.3 **HIPAA.** CFMG, the County, Facility, and their employees, agents and subcontractors shall fully comply with, and shall implement all necessary policies and/or procedures in order to comply with, the requirements of HIPAA as it applies to the services provided under this Agreement. The County, Facility, and their employees and agents shall indemnify and hold harmless CFMG from and against any claims of any kind made as a result of alleged or actual violations of HIPAA by the County and its employees, agents and subcontractors, unless such claims are proven to be caused by the sole negligence or willful misconduct of CFMG.

ARTICLE XI

MISCELLANEOUS

- 11.0 **INDEPENDENT CONTRACTOR STATUS.** It is mutually understood and agreed that CFMG is an independent contractor in the performance of the work duties and obligations devolving upon CFMG under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which CFMG shall perform the assigned work and functions. The contractual interest of County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is agreed that no employer-employee relationship is created and CFMG shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes; any contributions or premiums imposed or required by workers' compensation; any unemployment insurance; any social security income tax; and any other obligations from statutes or codes applying to CFMG, or its sub-contractors and employees, if any.

It is mutually agreed and understood that CFMG, its subcontractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

CFMG shall ensure that all its personnel and employees, subcontractors and their employees, and any other individuals used to perform the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

- 11.1 **SUBCONTRACTING.** In performing its obligations under the Agreement, it is understood that CFMG is not licensed or otherwise authorized to engage in any activity that may be construed or deemed to constitute the practice of medicine, dentistry, optometry, or other professional healthcare service requiring licensure or other authorization under state law. To comply with these requirements CFMG may engage physicians or other clinicians as independent contractors (“Contract Professionals”), rather than employees, in order to supply the clinical services required under this Agreement. CFMG shall engage Contract Professionals that meet the applicable professional licensing requirements and CFMG shall exercise administrative supervision over such Contract Professionals as necessary to insure the fulfillment of the obligations contained in this Agreement. Contract Professionals shall provide clinical services under this Agreement in a manner reasonably consistent with the independent clinical judgment that the Contract Professional is required to exercise. It is further understood that CFMG may subcontract for specialized services such as pharmacy, medical waste, medical supplies and other services or supplies which it is required to provide under this Agreement.
- 11.2 **AGENCY.** For purposes of asserting any statutory rights afforded to the County to pay providers for medical services at certain reduced rates, County designates CFMG as their agent to assert such rights and privileges.
- 11.3 **EQUAL EMPLOYMENT OPPORTUNITY.** CFMG will not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, national origin, place of birth, marital status, sexual orientation, age or handicap unrelated to a bona fide occupational qualification of the position or because of status as a disabled veteran or Vietnam-Era veteran. CFMG will distribute copies of its commitment not to discriminate to all persons who participate in recruitment, screening, referral and selection of job applicants, and to prospective job applicants.
- 11.4 **WAIVER OF BREACH.** The waiver of either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.
- 11.5 **OTHER CONTRACTS AND THIRD-PARTY BENEFICIARIES.** The Parties acknowledge that CFMG is neither bound by or aware of any other existing contracts to which the County is a party and which relate to the providing of health care to Inmates/Detainees at the Facility. The Parties agree that they have not entered into this Agreement for the benefit of any third person or persons, and it is their express intention that this Agreement is for their respective benefits only and not for the benefits of others who might otherwise be deemed to constitute third-party beneficiaries thereof.
- 11.6 **FORCE MAJEURE.** In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority of local, State or Federal governments or because of riots, war, terrorism, explosions, acts of civil or military authority, acts of public enemy, public disturbances, lack of adequate security escorts, strikes, lockouts, differences with workers, earthquakes, fires, floods, Acts of God or any other reason whatsoever which is not reasonably within the control of the Party whose performance is interfered with and which, by the exercise of reasonable diligence, said Party is unable to prevent; the Party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder during the period such cause continues.

- 11.7 CHANGES IN SCOPE. If at any time during the Term of this Agreement (as amended), there is a material change in the scope of services provided by CFMG as a result of new, amended, and/or a repealed law or laws (including statutes, codes, and/or case law), related legislation, and/or applicable regulations, the Parties hereby agree to re-negotiate the affected terms of this Agreement in good faith, and within a reasonable time not to exceed 30 days from the effective date of the material change. In the event the Parties are not able to re-negotiate the affected terms of this Agreement, either Party may terminate the Agreement without cause upon providing 60 days advance written notice.
- 11.8 ASSIGNMENT. Except as otherwise provided herein, no Party to this Agreement may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Parties; provided however, that CFMG may assign its rights or delegate its duties to an affiliate of CFMG, or in connection with the sale of all or substantially all of the stock assets or business of CFMG, without the prior written consent of the other Parties. Any unauthorized attempted assignment shall be null and void and of no force or effect.
- 11.9 NOTICES. Any notice of termination, requests, demands or other communications under this Agreement shall be in writing and shall be deemed delivered: (a) when delivered in person to a representative the Parties listed below; (b) upon receipt when mailed by overnight courier service, mailed by first-class certified or registered mail, return receipt requested, addressed to the Party at the address below; or (c) upon confirmation of receipt if sent by facsimile to the fax number of the Party listed below:
- | | |
|---|-------------------------------------|
| If for CFMG: | If for County: |
| California Forensic Medical Group, Inc. | Lassen County |
| Attn: Chief Legal Officer | Attn: County Administrative Officer |
| 1283 Murfreesboro Road, Suite 500 | 221 North Roop Street |
| Nashville, TN 37217 | Susanville, CA 96130 |
- Such address may be changed from time to time by either Party by providing written notice as provided above.
- 11.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of laws or rules of any jurisdiction.
- 11.11 EXECUTION AUTHORITY. By their signature below, each signatory individual certifies that they are the properly authorized agent or officer of the applicable Party hereto and have the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that any resolutions necessary to create such authority have been duly passed and are now in full force and effect.
- 11.12 SURVIVAL. The following provisions will survive any termination or expiration of the Agreement: Article VIII, Article IX and Article X.
- 11.13 COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be considered an original and all of which shall constitute but one and the same instrument.
- 11.14 TITLES OF PARAGRAPHS. Titles of paragraphs are inserted solely for convenience of reference and shall not be deemed to limit, expand or otherwise affect the provisions to which they relate.

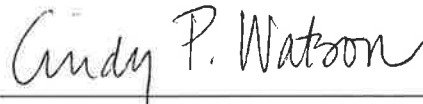
- 11.15 SEVERABILITY. In the event that any one or more provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein.
- 11.16 ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and Agreements that have been made in connection with the subject matter hereof. This Agreement may be amended at any time, but only with the written consent of all Parties.
- 11.17 PROPRIETARY INFORMATION OF CFMG. Notwithstanding anything to the contrary herein contained, nothing in this Agreement shall be construed to require CFMG to act or refrain from acting in any way that might jeopardize CFMG's exclusive ownership interest in or the trade secret, proprietary, confidential, or otherwise protected status of any of CFMG's information, data, forms, processes, or materials.
- 11.18 ORDER OF PRECEDENCE. In the event of any conflict between or among this Agreement and any addenda or exhibits hereto or any other document, information, or instrument, this Agreement shall take precedence.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as their official act by their respective representative, each of whom is duly authorized to execute the same.

AGREED TO AND ACCEPTED AS STATED ABOVE

COUNTY OF LASSEN, CALIFORNIA

CALIFORNIA FORENSIC MEDICAL
GROUP, INC.



Name: _____

Name: Cindy Watson

Title: _____

Title: Chief Operating Officer

Date: _____

Date: 11/8/19 _____

EXHIBIT A – STAFFING MATRIX

Lassen County, CA rebid RFP revised to reflect Juvenile Hall closing									
Wellpath									
Day Shift									
POSITION	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Hrs/WK	FTE
Health Services Administrator	8	8	8	8	8	-	-	40	1.0000
RN/LVN	8	8	8	8	8	8	8	56	1.4000
Physican - Medical Director	1	1.5	-	-	1	-	-	3.5	0.0875
LCSW/MFT/Psych RN	8	8	8	8	-	-	-	32	0.8000
Psychiatrist	-	-	-	4	-	-	-	4	0.1000
Total Hours/FTE - Day	25	26	24	28	17	8	8	135.5	3.3875
Evening Shift									
POSITION	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Hrs/WK	FTE
LVN/RN	8	8	8	8	8	8	8	56.0	1.4000
LVN	-	4	-	4	-	-	-	8	0.2000
Total Hours/FTE - Evening	8	12	8	12	8	8	8	64	1.6000
Weekly Total									
TOTAL HOURS/FTE - WEEKLY	33	38	32	40	25	16	16	200	4.9875

EXHIBIT B – INSURANCE AND RISK

Defense of Claims and Actions

Contractor shall investigate, adjust, settle and/or defend County against any and all claims, actions, or proceedings including, but not limited to, wrongful death, medical malpractice, claims under 42 U.S.C. Section 1983, and claims against County by physicians, healthcare professionals, and personnel performing services for Contractor pursuant to this Agreement for employee benefits of any kind, arising out of Contractor's provision of health care services and programs under this Agreement. As part of this obligation to provide a defense to the County, Contractor shall provide to County legal representation where necessary in all cases other than petitions for writ of habeas corpus brought by inmates in the County's Superior Court. Contractor shall be fully responsible for all other legal matters related to its provision of services under this Agreement, and shall where necessary, respond verbally or in writing or give testimony in any court of law as part of the comprehensive health care services provided, and at no additional cost to the County. Contractor shall cooperate with County in the defense of habeas corpus writ petitions filed against the County. This cooperation shall include, but is not limited to, providing medical records and testimony of Contractor personnel at hearings at no additional cost to the County.

Insurance

- A. Prior to the commencement of work, and as a precondition to this contract, Contractor shall purchase and maintain the following types of insurance for the stated minimum limits indicated during the term of this Agreement. Contractor shall provide a certificate of insurance and blanket endorsements naming County and its officers, employees and agents as an additional insured on the Commercial General Liability (using ISO form CG2026 or an alternate form that is at least as broad as form CG2026), Automobile Liability, and Professional Liability policies described below as to any liability arising from the performance of this Agreement.

The insurance carrier, and the contractor, shall be required to give County notice of termination at least 30 days prior to the intended termination of any specific policy. The below-referenced policies shall not be canceled, non-renewed, or materially reduced in coverage without thirty (30) days prior written notice being provided to County in accordance with the notice provisions set forth herein.

Any deductibles or self-insured retentions must be declared and initially approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration, and defense costs within the retention.

1. Commercial General Liability (CGL): \$1,000,000 per occurrence covering bodily injury, personal injury and property damage.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage in the event motor vehicles are used by Contractor in the performance of the Agreement.
3. Workers' Compensation: Statutory coverage as required according to the California Labor Code, including Employers' Liability limits of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability: \$1,000,000 limit per occurrence and \$2,000,000 annual aggregate limit covering Contractors wrongful acts, errors, and omissions. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than five (5) years following

this Agreement's expiration, termination, or cancellation. Any aggregate limit for professional liability must be separate and in addition to any CGL aggregate limit.

5. Cyber Liability Insurance: With limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate, coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement. The policy shall provide coverage for breach responses costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

B. Insurance Conditions

1. The Contractor's insurance shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it. Contractor's insurance shall be placed with admitted insurers rated by A.M. Best Co. as A-VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County's Risk Manager.
2. The County is not to be liable for the payment of premiums, assessments, deductibles or SIRs on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Contractor to furnish insurance during the term of this contract.
3. If any of the required policies provide claims-made coverage, the Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. The insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. 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 work.
4. The insurance requirements and limits of the insurance provisions of this contract/agreement shall not be construed to limit any direct or indirect liability of the Contractor. Acceptance of insurance does not relieve Contractor from liability under this provision. This provision shall apply to all damages or claims for damages related to the services performed by Contractor pursuant to the terms and conditions of this Agreement regardless if any insurance obtained by Contractor is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided by Contractor hereunder.
5. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or 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.
6. Failure to Maintain Coverage: If the Contractor fails to maintain any of the insurance coverage required herein, County may withhold payment, order the Contractor to stop the work, declare the Contractor in breach, suspend or terminate the Contract, assess insurance or pay premiums due on existing policies. County may collect any replacement insurance costs or premium payments made by County to an insurer from Contractor or deduct the amount paid from any

sums due the Contractor under this Agreement. Breach of any insurance provision herein may be considered as a material breach in the discretion of the County.

7. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of documentation evidencing compliance with these insurance requirements, including the endorsements required by these specifications, at any time.
8. Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
9. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.

Indemnification

To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County, its Board of Supervisors, officers, officials, employees, agents and volunteers from and against any and all liability, claims, losses, damages, expenses, and costs (including without limitation costs and fees of litigation) attributable to the acts or omissions of Contractor in performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage to the extent caused by the acts or omissions of the County, its officers, officials, employees, or volunteers. This indemnification obligation is the sole responsibility of the Contractor and should not be denied or impacted by any decision made by the Contractor's current insurance carrier. Additionally, it should be understood that the County as a public entity is governed by the California Government Code (Gov. Code section 900 *et. seq.*) and when a formal Government Tort claim is filed, it is expected that Contractor will treat this as formal statutory notice and investigate and or appoint counsel to any matters that the County would be owed indemnification. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits. In the event that the Contractor accepts a tender of defense with a reservation of rights, the selection of defense counsel is subject to approval by the County and the Contractor agrees to coordinate its defense strategy with the County.