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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 JESSE HERNANDEZ et al., on behalf of  
 20 themselves and all others similarly situated,

21 Plaintiffs,

22 v.

23 COUNTY OF MONTEREY; MONTEREY  
 24 COUNTY SHERIFF'S OFFICE;  
 25 CALIFORNIA FORENSIC MEDICAL  
 26 GROUP, INCORPORATED, a California  
 27 corporation; and DOES 1 to 20, inclusive,

28 Defendants.

Case No. CV 13 2354 PSG

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN OPPOSITION  
 TO DEFENDANT CALIFORNIA  
 FORENSIC MEDICAL GROUP,  
 INC.'S MOTION TO DISMISS  
 PLAINTIFFS' SECOND AMENDED  
 COMPLAINT PURSUANT TO  
 FEDERAL RULE OF CIVIL  
 PROCEDURE RULE 12(b)(6)**

Judge: Hon. Paul S. Grewal  
 Date: August 12, 2014  
 Time: 10:00 a.m.  
 Crtrm.: 5

Trial Date: None Set

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## INTRODUCTION

This Motion to Dismiss the Sixth Cause of Action in the Second Amended Complaint (“Complaint”) seeks to exempt the for-profit private company that is the sole provider of health care services to prisoners in the Monterey County Jail (“Jail”) from any responsibility or liability under Title III of the Americans with Disabilities Act (“ADA”).<sup>1</sup>

The Complaint alleges that Defendants County of Monterey (“County”), Monterey County Sheriff’s Office, and California Forensic Medical Group (“CFMG”) have provided constitutionally inadequate security, medical care and mental health care to prisoners in the Jail, and have also discriminated against and failed to accommodate prisoners with disabilities in violation of the ADA. CFMG is a private health care provider who, pursuant to a contract (“Contract”) entered into with the County, is the sole provider of medical and mental health care at the Jail. The Complaint alleges in great detail the violations of the ADA that have occurred routinely and systematically in the course of CFMG’s operations at the Jail. *CFMG does not contest in its Motion these allegations of violations or their sufficiency to state a claim under Title III of the ADA.* Rather, CFMG makes two other arguments to try to remove itself from Title III coverage: (1) that it does not “operate” the health care facilities and services in the Jail, and (2) that “as a matter of law,” CFMG Memorandum of Points and Authorities (“CFMG Mem.”), Dkt. No. 59, at 4, it is insulated from Title III liability because its jail health care facilities are not open to the general public.

Tellingly, CFMG must bolster its legal arguments with blatant and persistent mischaracterizations of Plaintiffs’ claims, and Plaintiffs want to set the record straight at

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<sup>1</sup> CFMG’s Motion to Dismiss joins the County of Monterey and Monterey County Sheriff’s Office’s Motion to Dismiss filed on April 25, 2014 seeking dismissal of certain Plaintiffs for lack of standing and/or on the basis that that their claims are moot. *See* Defendant California Forensic Medical Group Inc.’s (“CFMG”) Notice of Motion to Dismiss Plaintiff’s Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), Dkt. No. 58, at 2. For all the reasons stated in Plaintiffs’ Opposition to the County’s Motion to Dismiss, CFMG’s standing and mootness arguments lack merit, and the Motion to Dismiss should be denied on that basis as well.

1 the outset. Plaintiffs are **not** alleging that “CFMG is the operator of Monterey County  
 2 Jail,” CFMG Mem. at 7, nor are Plaintiffs disputing that “a jail is undisputedly **not** a place  
 3 of public accommodation.” CFMG Mem. at 5. Rather, Plaintiffs are alleging that CFMG  
 4 operates the health care facilities at the Jail, and that those health care facilities are covered  
 5 service establishments and public accommodations within the meaning of Title III.  
 6 Neither the statute, nor the case law, nor the ADA regulations, nor the Congressional  
 7 purpose underlying the ADA supports CFMG’s position, and this Court should deny its  
 8 Motion to Dismiss.

### 9 **FACTS**

10 The County entered into a contract with CFMG to provide the health care facilities  
 11 and services for the prisoners. The current Contract<sup>2</sup> commenced on April 1, 2012.  
 12 Second Amended Complaint (“SAC”) ¶ 84, Dkt. No. 41. More than 17,000 prisoners have  
 13 been booked into the Jail since the contractual term began, SAC ¶ 57, and on any given  
 14 day it is not unusual for the Jail to house more than 1,100 prisoners, SAC ¶ 40. CFMG  
 15 employs fifty or more persons to staff its medical facilities and provide services at the Jail.  
 16 SAC ¶ 34.

17 The Contract gives CFMG control over every aspect of the prisoners’ medical,  
 18 dental and mental health care. It provides that CFMG “shall be responsible for the medical  
 19 care, dental care, and mental health care of an inmate commencing with [] booking.”  
 20 Contract, attached as App’x A, at Bates 18 of 72.<sup>3</sup> The health care facilities inside the Jail

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22 <sup>2</sup> The Contract (attached hereto as **Appendix A** and filed as Exhibit HH to the Declaration  
 23 of Gay Crosthwait Grunfeld in Support of Class Certification, Dkt. No. 49-17) consists of  
 24 a fourteen-page “Agreement Between County of Monterey And California Forensic  
 25 Medical Group For Inmate Healthcare Services For Adult and Juvenile Detention  
 26 Facilities,” as well as several exhibits to the Contract providing for pricing and staffing  
 arrangements. This Memorandum cites only to the portions of the Contract that  
 correspond with the fourteen-page agreement and Exhibit 1A to the Contract, which  
 provides for the “Scope of Work” for adult detention.

27 <sup>3</sup> The Contract is properly before this Court on this Rule 12(b)(6) motion. A document  
 28 “may be incorporated by reference into a complaint if the plaintiff refers extensively to the  
 document or the document forms the basis of the plaintiff’s claim.” *United States v.*  
 (footnote continued)



1 consist of two main adult “Outpatient and Clinic Settings”: (1) a men’s main clinic,  
 2 housed in the Core Building and consisting of five rooms and six beds; and (2) a women’s  
 3 clinic area consisting of one private examination room where prenatal and gynecological  
 4 care is provided. *See id.* at 5-6 of 72.

5 In the course of providing the medical and mental health care in the Jail, CFMG and  
 6 CFMG personnel have routinely and systematically violated the rights of prisoners with  
 7 disabilities protected by Title III of the ADA. As alleged in detail in the Complaint, those  
 8 violations include the following:

9 1. Failing to provide prisoners with disabilities with assistive devices such as  
 10 wheelchairs, walkers, crutches and canes. SAC ¶¶ 313-19.

11 2. Failing to provide prisoners who have hearing and speech impairments with  
 12 sign language interpreters, hearing aids or other auxiliary aids to enable them to participate  
 13 in services and facilities of the Jail, including the health care facilities and services. SAC  
 14 ¶¶ 300-12. The absence of such communicative aids means that prisoners with such  
 15 disabilities are not able to provide CFMG with all the necessary information during  
 16 medical examinations, increasing the risk of misdiagnosis and mistreatment. SAC ¶ 126.  
 17 Plaintiff Yancey, for example, has been deaf since birth. SAC ¶ 31. He was examined by  
 18 a CFMG Physician’s Assistant for a fractured right arm and left tibia, but without a sign  
 19 language interpreter present. As noted by the PA’s own notes, this led to a “limited”  
 20 medical exam due to “decreased verbal communication.” SAC ¶ 124.

21 3. Failing to put in place the policies or practices necessary for identifying and  
 22 tracking prisoners with disabilities and the accommodations those prisoners require. SAC

23 \_\_\_\_\_  
 24 *Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). CFMG’s Contract with the County is  
 25 referenced at least 14 times in the Second Amended Complaint, and is part of the basis of  
 26 Plaintiffs’ claim that Defendant “operates” the Jail. Alternatively, a court may take  
 27 judicial notice of “documents whose contents are alleged in a complaint and whose  
 authenticity no party questions, but which are not physically attached to the pleading.”  
*Dizon v. Wells Fargo, N.A.*, No. 12-CV-04623 NC, 2012 WL 6203008, at \*2 (N.D. Cal.  
 Nov. 26, 2012).



¶¶ 7, 278. As a result, prisoners' files frequently lack any of the documentation needed to provide them with the treatment and accommodations to which they are legally entitled. SAC ¶¶ 286-91.

4. Prisoners with psychiatric disabilities have been ordered placed in "rubber rooms" as punishment for an inability to follow rules. SAC ¶¶ 255-56. Rubber rooms are single cells with no furnishings or toilets in which prisoners are frequently left fully naked. SAC ¶ 206. The only features of the cell are the door, through which food can be delivered, and a grate in the floor that serves as the toilet for feces and urine. *Id.* Because there is no bed, prisoners are forced to sleep and eat on the cold, dirty floor where the grate is located. *Id.* After experiencing an acute psychiatric incident, Plaintiff Mefford was ordered by a CFMG psychiatrist to be held in a rubber room over the weekend until he could be seen by the doctor. This led to additional acts of self-harm and to a deterioration of Plaintiff Mefford's mental health. SAC ¶ 266.

5. CFMG's failure to properly screen, track and treat prisoners' serious psychiatric disabilities has led to a greater risk of suicide, and in fact there were three suicides in the Jail and more than a dozen attempted over the last four years. SAC ¶¶ 200-05.

## ARGUMENT

### I. STANDARD OF REVIEW UNDER RULE 12(b)(6)

The notice pleading requirement of "a short and plain statement of the claim," Fed. R. Civ. P. 8(a)(2), creates a "powerful presumption against rejecting pleadings for failure to state a claim," and prevents courts from granting motions to dismiss absent exceptional circumstances. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). A court may dismiss a claim "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002). A court may not dismiss a complaint in which a plaintiff has alleged enough facts (taken as true) to state a claim for relief that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This is especially true in civil rights

1 cases, where the Ninth Circuit, rejecting the “heightened pleading standard,” concluded  
 2 that “federal courts and litigants must rely on summary judgment and control of discovery  
 3 to weed out unmeritorious claims sooner rather than later.” *Gilligan*, 108 F.3d at 249  
 4 (quoting *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507  
 5 U.S. 163, 168-69 (1993)).

## 6 **II. CFMG IS THE OPERATOR OF THE HEALTH CARE FACILITIES AT** 7 **THE MONTEREY COUNTY JAIL**

8 Title III prohibits discrimination on the basis of disability “by any person who  
 9 owns, leases, ... or operates a place of public accommodation.” 42 U.S.C. § 12182(a). A  
 10 place of “public accommodation” is, in turn, defined in terms of twelve explicit categories.  
 11 The “service establishment” category explicitly includes a “professional office of a health  
 12 care provider” and a “hospital” as places of public accommodation under Title III. 42  
 13 U.S.C. § 12181(7)(F).

14 Plaintiffs plainly and explicitly plead that CFMG operates “a professional office of  
 15 a health provider” and/or “hospital” inside the Jail. SAC ¶ 398. CFMG’s assertion that  
 16 “there is no rational basis to conclude CFMG is *the operator of the Monterey County Jail*”  
 17 CFMG Mem. at 7 (emphasis added) is simply a non-sequitur intended to divert attention  
 18 from the facts and Plaintiffs’ actual claim.

19 CFMG’s operational control over the Jail’s health care facilities is delineated in the  
 20 Contract. Under the terms of the Contract, CFMG “shall be responsible for the medical  
 21 care, dental care, and mental health care of an inmate commencing with the booking,  
 22 medical clearance, and physical placement of said inmate into County Adult Detention  
 23 Facilities.” *See* Contract, App’x A at 18 of 72. In addition, CFMG is responsible for  
 24 “administering medications to inmates;” for the provision of “required, medical supplies,  
 25 and medical record supplies;” and for “the cost of all pharmaceuticals administered.” *Id.* at  
 26 21-23 of 72. CFMG’s Medical Director is “responsible to assure the quality of health care  
 27 provided.” *Id.* at 18 of 72.

28 If these provisions left any doubt of the level of control enjoyed by CFMG, the

1 Contract makes it even clearer: CFMG “*shall determine the method, details and means of*  
 2 *performing services.*” *Id.* at 18 of 72 (emphasis added). Given this top-to-bottom level of  
 3 operational control of the medical facilities and the provision of medical services at the  
 4 Jail, CFMG is in a position to modify and change practices and policies that deprive its  
 5 prisoner-patients with disabilities of their rights under Title III of the ADA.

6 CFMG puts forward only one case to support its argument that it is not an operator  
 7 of the professional office of a health care provider or a hospital at the Jail. CFMG Mem. at  
 8 6. *Aikins v. St. Helena Hosp.*, 843 F. Supp. 1329 (N.D. Cal. 1994), is a puzzling choice, as  
 9 the court’s reasoning thoroughly undermines CFMG’s argument. In *Aikins*, the defendant  
 10 seeking to dismiss a Title III claim was an emergency room physician who had direct  
 11 contact with the patient and the plaintiff’s spouse. The court held that Title III’s “language  
 12 relating to ownership or operation implies a requirement of control over the place  
 13 providing the services.” *Id.* at 1335. Thus, the court unsurprisingly held that this doctor—  
 14 who was an independent contractor, had “no authority to enact or amend hospital policy”  
 15 or to change hospital policy with respect to the use of interpreters (the gravamen of the  
 16 ADA complaint)—was not a proper defendant under Title III. *Id.*

17 The difference between the emergency room doctor in *Aikins* and CFMG in terms  
 18 of “some nexus establishing he was an ‘operator,’” *see* CFMG Mem. at 6, is quite  
 19 instructive. If Plaintiffs in the instant case had chosen to sue an individual CFMG doctor  
 20 or nurse who worked in the Jail, then *Aikins* would be strong authority for that individual’s  
 21 motion to dismiss. However, Plaintiffs have sued CFMG, who not only has some “nexus”  
 22 with the operation of the medical facilities in the Jail, but has sole responsibility for these  
 23 facilities and for the provision of all health care services to the prisoners in the Jail.

24 CFMG falls back on its assertion that the County has “ultimate authority” for health  
 25 care treatment in the Jail. CFMG Mem. at 7. CFMG is ignoring that Title III covers  
 26 “owns” **or** “operates” in the conjunctive, 42 U.S.C. § 12182(a), which on its face  
 27 contravenes the notion that only the “ultimate authority” is responsible under Title III.  
 28 And the Ninth Circuit in *Lentini v. California Center for the Arts, Escondido*, 370 F.3d

837, 849 (9th Cir. 2004), looking at the ordinary and natural meaning of words, defined “operates” as used in Title III as “to put or keep in operation, to control or direct the functioning of, or to conduct the affairs of; manage.” *Id.* (internal quotation marks omitted); *see also Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 878, n.14 (9th Cir. 2004) (same). The breadth of this statutory term is evidenced by the *Lentini* court’s decision holding that an employee who served as Director of Center Sales and Event Services at the California Center for the Arts was an “operator” within the meaning of Title III, and thus accountable for the discriminatory treatment of a theater patron with a disability, because he “was in a position of authority, having the ability to instruct the Center staff on who could or could not be admitted to the theater.” *Lentini*, 370 F.3d at 849. The Contract in the instant case gives CFMG far greater operational control than the sales director in *Lentini*. CFMG is “an operator” covered by Title III.

**III. THE JAIL HEALTH CARE FACILITIES OPERATED BY CFMG ARE COVERED BY TITLE III EVEN THOUGH THE JAIL IS NOT OPEN TO THE PUBLIC AND THE USERS OF CFMG’S HEALTH CARE SERVICES ARE INCARCERATED.**

**A. The Courts Have Consistently Rejected Narrowing Constructions of Title III’s Coverage as Inconsistent with Congress’ Expansive Purpose in Adopting the ADA.**

CFMG asserts (as if it is black letter law) that a facility must be “open and usable by the public” to be a Title III public accommodation. CFMG Mem. at 5-6. This does not reflect the Congressional intent and purpose, as interpreted and applied by the courts.

The issue of whether highly restricted access and use are incompatible with being a Title III “place of public accommodation” was directly addressed by the United States Supreme Court in *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001). Casey Martin, a golfer with a disability who was prohibited from using a cart while playing in a professional PGA tournament, sued to overturn the prohibition under Title III of the ADA. In the Ninth Circuit, the PGA argued that the competitors’ area of the golf course “behind the ropes” was not a public accommodation because the public has no right to enter it. *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 997 (9th Cir. 2000). The Ninth Circuit rejected this argument,

1 noting that “the fact that the users of a facility are highly selected does not mean that the  
2 facility cannot be a public accommodation.” *Id.* at 998.

3 The Supreme Court affirmed. 532 U.S. 661. While the Court did not directly  
4 address PGA’s “behind the ropes” argument (because PGA “reframe[d] the coverage  
5 issue” and did not make that argument, *id.* at 678), PGA came up with another narrowing  
6 construction of Title III—that the golfer was not a “client or customer” and thus not  
7 covered by Title III. The Court rejected this as well, and affirmed the Ninth Circuit.

8 The Supreme Court’s decision provides an analytical framework for interpreting the  
9 terms of Title III and the scope of its coverage. The keystone of this framework is the  
10 legislative history of the ADA and the clear expressions of Congressional intent. The  
11 Supreme Court in *Martin* stressed Congress’ “expansive purpose,” *Id.* at 680, that the  
12 ADA be “a ‘clear and comprehensive national mandate’ to eliminate discrimination  
13 against disabled individuals, and to integrate them ‘into the economic and social  
14 mainstream of American life.’” *Id.* at 675 (quoting H.R. REP. 101-485, pt. 2, 50). The  
15 legislative intent was that the statute reach into all “critical areas” of society where persons  
16 with disabilities face discrimination, two of which are involved in the instant case:  
17 “[D]iscrimination against individuals with disabilities persists in such critical areas as  
18 employment ... transportation, communication, recreation, *institutionalization*, *health*  
19 *services*, voting, and access to public services.” *Id.* (quoting 42 U.S.C. § 12101(a)(3)  
20 (emphasis added)).

21 In addition, the Court placed great emphasis on the twelve “extensive categories”  
22 listed to define “public accommodation.” *Id.* at 676. That a “golf course” was included on  
23 this list, 42 U.S.C. § 12181(7)(L), was deemed highly significant by the Court because  
24 “the legislative history indicates [that the 12 categories] should be construed liberally to  
25 afford people with disabilities equal access to the wide variety of establishments available  
26 to the nondisabled.” 532 U.S. at 676-77 (internal quotation marks omitted). Also included  
27 in the “12 extensive categories” are “professional office of a health care provider, hospital,  
28 or other service establishment[] ...” *Id.*

1 Other courts have found that facilities that are not “open and usable by the public,”  
 2 are “public accommodations” under Title III. For example, in *Independent Living*  
 3 *Resources v. Oregon Arena Corp.*, 982 F. Supp. 698 (D. Or. 1997), *overruled on other*  
 4 *grounds by Miller v. Speedway Corp.*, 536 F.3d 1020 (9th Cir. 2008), the court held that  
 5 the executive suites at a public arena “licensed by businesses as a place for entertaining  
 6 clients and other important guests” were a Title III public accommodation. *Id.* at 759-60.  
 7 The court explained that the fact that the general public did not have access to the suites  
 8 was not determinative; “a facility that specializes in hosting wedding receptions and  
 9 private parties may be open only to invitees of the bride and groom, yet it clearly qualifies  
 10 as a public accommodation.” *Id.* at 759; *see also Tamara v. El Camino Hosp.*, 964 F.  
 11 Supp. 2d 1077, 1082-83 (N.D. Cal. 2013) (locked psychiatric ward in a private hospital  
 12 covered by Title III).

13 Courts have considered other arguments by private entities attempting to narrow the  
 14 scope of protection afforded persons with disabilities by Title III, and found that these  
 15 arguments were inconsistent with “the ADA’s remarkable breadth of language and  
 16 purpose.” *Menkowitz v. Pottstown Mem’l Med. Ctr.*, 154 F.3d 113, 123 (3rd Cir. 1998).  
 17 For example, courts have consistently given a broad definition of the statutory term  
 18 “individual” when defining who is protected by Title III. 42 U.S.C. § 12182(a). In  
 19 *Menkowitz*, the court rejected limiting the scope of Title III’s coverage to “‘guests’,  
 20 ‘patrons’, ‘clients’, ‘customers’ or ‘members of the public,’” 154 F.3d at 121, especially  
 21 because that case dealt with the provision of services in the “critical area” of health  
 22 services. *Id.* at 118. And in *Molski v. M.J. Cable, Inc.*, 481 F. 3d 724 (9th Cir. 2007), the  
 23 Ninth Circuit stated that it agreed with the reasoning in *Menkowitz* that narrowing the  
 24 statutory coverage would conflict with “‘both the language of Title III and its legislative  
 25 history.’” *Id.* at 733 (quoting *Menkowitz*, 154 F.3d at 121).

26 Just as these courts have followed the direction of the United States Supreme Court  
 27 to keep focus on the “expansive purpose” of the ADA in rejecting narrowing constructions,  
 28 this Court should similarly reject CFMG’s argument to exclude jails and prisons, and the



1 individuals who are receiving health care services while incarcerated, from the otherwise  
 2 broad and comprehensive coverage of Title III. A judicially-created exemption from  
 3 Title III for jail health care providers should not be created where Congress has not done  
 4 so.

5 **B. CFMG’s Health Care Facilities in the Jail Constitute a “Place” that Is**  
 6 **Encompassed Within the Coverage of Title III.**

7 CFMG states somewhat cryptically that the “only physical place described in  
 8 plaintiffs’ Second Amended Complaint is the Monterey County Jail”. CFMG Mem. at 5.  
 9 This is another example of CFMG feigning ignorance of Plaintiffs’ actual Title III claim,  
 10 which is based on the medical facilities in the Jail that CFMG operates. SAC ¶ 398. A  
 11 detailed description of CFMG’s health care facilities is not required in the Complaint, but  
 12 that description (which of course is well known to CFMG) is provided in the Contract,  
 13 which is properly before the Court on this Motion (see fn. 2, *supra*). As set forth in the  
 14 Facts, CFMG’s operation provides services in at least two adult “Outpatient and Clinic  
 15 Settings,” with examination rooms and beds for patients. Clearly CFMG provides medical  
 16 and mental health care in an actual, “physical place” at the Jail designated for such  
 17 services. *See* Contract, App’x A at 5-6 of 72; CFMG Mem. at 5.

18 The governing ADA regulations forestall any argument that CFMG might make  
 19 that its health care facilities in the Jail are somehow not a physical “place” and therefore a  
 20 covered “public accommodation.” The Department of Justice has issued regulations  
 21 interpreting the ADA. Courts have repeatedly recognized “[w]here an agency is tasked  
 22 with administering a statute, [courts] defer to its interpretation of the statute so long as ...  
 23 the agency’s interpretation is not arbitrary or capricious.” *Disability Law Center of*  
 24 *Alaska, Inc. v. Anchorage School Dist.*, 581 F.3d 936, 939 (9th Cir. 2009) (citing *Chevron*  
 25 *v. Nat. Res. Def. Council*, 467 U.S. 837, 842-43 (1984)). Here, the DOJ has issued 28  
 26 C.F.R. § 36.104, which specifies that “a place of public accommodation” is “a facility  
 27 operated by a private entity,” and defines “facility” to mean “all or any portion of  
 28 buildings, structures, sites...” (emphasis added). The health care facility that CFMG



operates occupies “a portion” of the Jail, and thus falls squarely within the regulations. DOJ’s interpretation should be followed. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1065-66 (9th Cir. 2010).

CFMG’s Jail operations meet other tests as well. For Title III to apply to a private entity operating a “place of public accommodation,” a court must evaluate whether “some connection” exists between “an actual physical place” and the private entity employing allegedly discriminatory practices. *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 2000) (insurance company administering employer’s group disability policy was not a public accommodation). For example, the Ninth Circuit held that a Title III-covered facility was still covered even if its activities were carried out at or within a publicly-owned facility which is not covered by Title III. *Disabled Rights Action Comm.*, 375 F. 3d at 878 (private association operating a rodeo within a state-owned arena). The Complaint and the Contract certainly allege a “connection” between the health care facilities in the Jail and CFMG. If CFMG intends to factually contest this “connection,” it must launch this line of defense after the pleadings stage.

**C. Another Court in the Northern District Has Ruled that State Laws Protecting Persons with Disabilities From Discrimination in Public Accommodations Apply to a Private Health Care Provider Operating Inside a Jail.**

In considering CFMG’s argument that a private health care provider is exempt from the ADA for its jail operations, this Court is not writing on a completely blank slate. Another district court in the Northern District recently considered very similar issues on a 12(b)(6) motion to dismiss filed by a private health care provider (“PHS/Corizon”) in the Santa Rita Jail in Alameda County. PHS was facing disability discrimination claims under state laws<sup>4</sup> that arose out of its provision of health care services to the prisoners—services

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<sup>4</sup> The plaintiff in *Wilkins-Jones* did not plead a claim under Title III, presumably because she was seeking only damages, which are not available under Title III. *See* 859 F. Supp. 2d at 1043. However, because PHS/Corizon was asking for a legal ruling that the state disability laws did not apply to private entities operating inside jails, the court’s reasoning (footnote continued)

1 that are strikingly similar to the broad range of services provided by CFMG in the  
 2 Monterey Jail. *Wilkins-Jones v. County of Alameda*, 859 F. Supp. 2d 1039, 1043 (N.D.  
 3 Cal. 2012).

4 The two state statutes at issue in *Wilkins-Jones*, the Unruh Civil Rights Act (“Unruh  
 5 Act”) (Cal. Civ. Code § 51) and the California Disabled Person Act (“CDPA”) (Civ. Code  
 6 § 54.1), both provide broad protection for persons with disabilities from discrimination  
 7 from private entities. The Unruh Act’s coverage is in terms of “business establishments,”  
 8 a term that the California Supreme Court has held includes “places of public  
 9 accommodation.” *Isbister v. Boys’ Club of Santa Cruz*, 40 Cal. 3d 72, 83 (1985). The  
 10 CDPA protects the rights of persons with disabilities to full and equal access to a broad list  
 11 of facilities and accommodations, including “medical facilities, including hospitals, clinics,  
 12 and physicians’ offices” and “places of public accommodation ... to which the general  
 13 public is invited.” Cal. Civ. Code § 54.1(a)(1).

14 PHS/Corizon’s motion to dismiss relied on the same argument that CFMG raises in  
 15 the instant Motion: that the laws intended to protect persons with disabilities from unequal  
 16 treatment by private entities did not apply to its health care operations at Santa Rita Jail  
 17 because jails are not a public place. Judge Chen’s well-reasoned decision rejecting this  
 18 argument serves as refutation of the fundamental premise underlying CFMG’s position in  
 19 the instant case:

20 *[I]t is reasonable to consider a jail a public place in the context of inmates’*  
 21 *rights to be free from discrimination on the basis of their disabilities. While*  
 22 *the general public is not permitted inside a jail at any given time, the*  
 23 *government has the power to compel members of the public to a jail under*  
 24 *certain circumstances. ... [A] jail is more like schools and hospitals*  
 25 *contemplated under the ADA, which also restrict public access in certain*  
 26 *times and circumstances but are nonetheless designed and intended to*  
 27 *provide services, goods, privileges, and advantages to members of the public.*

28 *Wilkins-Jones*, 859 F. Supp. 2d at 1054 (emphasis added) (internal quotation marks and  
 citations omitted).

in *Wilkins-Jones* is pertinent and persuasive.

CFMG's bald statement that it "is not the responsible entity for the jail under Title III," CFMG Mem. at 6, is just another manifestation of its attempt to hide behind the County in terms of responsibility for violations of the ADA. Judge Chen rejected a similar argument from PHS/Corizon, recognizing that the health care provider was a separate entity from the Jail, something that CFMG repeatedly tries to obscure:

PHS/Corizon is thus qualitatively different from a correctional facility itself; while the County's operation of a jail may not be a business, PHS/Corizon is a business establishment operating for profit within a correctional facility.

*Id.* at 1049.

Judge Chen's ruling—and his reasoning—that PHS/Corizon (who is presumably a competitor of CFMG in the business of privatized jail health services) is a responsible entity under the state disability laws for its operations at Santa Rita Jail is persuasive authority here. This Court should likewise reject CFMG's claim that it has no responsibility under the ADA for its very similar operations at the Monterey County Jail.

**D. Declaring Privatized Jail Medical Facilities To Be Title III-Free Zones Is Inconsistent with Congress' Intent that the ADA Be a Comprehensive National Mandate, and with Court Decisions that Recognize that Persons With Disabilities Who Are Incarcerated Must Be Included In That Mandate.**

CFMG is not just arguing that its health care facility in the Jail is not covered by Title III; it is also arguing that the patients with disabilities treated inside the Jail do not have Title III protections simply because they are incarcerated. The legal ruling CFMG seeks would have a dual impact—it will insulate CFMG (and other operators of health care facilities such as PHS/Corizon) from Title III liability, while at the same time depriving prisoners with disabilities of any Title III protections. Such a ruling conflicts not only with the expansive purpose with which Congress adopted the ADA, but also with another line of authority also grounded in the ADA and its comprehensive scope—incarcerated persons should not be stripped of their ADA rights just because they are "behind the ropes." *Martin*, 204 F.3d at 998. This principle was succinctly stated by the Ninth Circuit in an early case involving the ADA rights of prisoners with disabilities: "Rights against

1 discrimination are among the few rights that prisoners do not park at the prison gates.”  
 2 *Armstrong v. Wilson*, 124 F.3d 1019, 1025 (9th Cir. 1997) (citation omitted). There the  
 3 court found that “[n]othing in the legislative history of the ... ADA reflects an intent by  
 4 Congress to exclude prisons or prisoners from the reach of the statutes.” *Id.* at 1023. In  
 5 enacting the ADA, “Congress intended to eliminate discrimination against individuals with  
 6 disabilities, just as it had earlier passed legislation mandating equal treatment of African–  
 7 Americans.” *Id.* at 1025.

8 The United States Supreme Court came to the same conclusion the very next year.  
 9 In *Pennsylvania Dep’t of Corrections v. Yeskey*, 524 U.S. 206 (1998), the Court noted the  
 10 “breadth” of the ADA’s language, and the statute’s explicit mention of “institutionaliza-  
 11 tion” as a “critical area” to combat disability discrimination, as factors leading to its  
 12 conclusion that ADA protections apply inside prisons. *Id.* at 212.

13 The 9th Circuit has reiterated this conclusion twice since *Yeskey*, refusing to find  
 14 that the closed and restricted nature of jails and prisons, and the confined and involuntary  
 15 status of the prisoners, means that individuals with disabilities are walled off from the  
 16 ADA while they are incarcerated. *See, e.g., Armstrong*, 622 F.3d at 1068; *Armstrong v.*  
 17 *Brown*, 732 F.3d 955 (9th Cir. 2013), *cert. denied*, — S. Ct. —, 2014 WL 859563 (June 9,  
 18 2014).

19 *Armstrong* was brought under Title II of the ADA, 42 U.S.C. § 12132, a provision  
 20 that applies to “public entities.” The Second Amended Complaint alleges a Title II Cause  
 21 of Action (Fifth Cause of Action, SAC ¶¶ 389-96) against the government defendants, but  
 22 *not* against CFMG because courts have held that “a private corporation is not a public  
 23 entity merely because it contracts with a public entity to provide some service.” *Edison v.*  
 24 *Douberly*, 604 F.3d 1307, 1310 (11th Cir. 2010); *Cox v. Jackson*, 579 F. Supp. 2d 831, 852  
 25 (E.D. Mich. 2008). Judge Chen referred to the “parallel provisions” of Title II and  
 26 Title III. “Although Title II focuses solely on public entities, Title III offers recourse  
 27 against private entities.” *Wilkins-Jones*, 859 F. Supp. 2d at 1047. This is echoed in the  
 28 Department of Justice’s ADA Title III Technical Assistance Manual, which states that

1 “[p]ublic entities, by definition, can never be subject to title III of the ADA, which covers  
 2 only private entities. Conversely, private entities cannot be covered by title II.” Americans  
 3 with Disabilities Act Title III Technical Assistance Manual Covering Public  
 4 Accommodations and Commercial Facilities, § III–1.7000, *available at*  
 5 <http://www.ada.gov/taman3.html>.

6 However, as the Technical Assistance Manual states:

7 There are many situations, however, in which public entities stand in very  
 8 close relation to private entities that are covered by title III, with the result  
 9 that certain activities may be affected, at least indirectly, by both titles. ...  
 10 [¶] Where public and private entities act jointly, the public entity must ensure  
 11 that the relevant requirements of title II are met; and the private entity must  
 12 ensure compliance with title III.

13 *Id.* If CFMG is exempt from Title III coverage, then its duties to comply with the ADA  
 14 are enforceable only through its contract with the County. *See Armstrong*, 622 F.3d at  
 15 1067-68, 1073-74 (requiring the State to insure parolees incarcerated in County Jails have  
 16 access to ADA grievances and other rights under the contracting regulation). 28 C.F.R.  
 17 § 35.310(b)(1) states: “a public entity, in providing any aid, benefit, or service, may not,  
 18 directly or through contractual, licensing, or other arrangements, discriminate against  
 19 individuals with disabilities.” *See Armstrong*, 622 F.3d at 1065.

20 Given the broad purpose of the ADA, the central importance of health care in the  
 21 scope of Title III, Congress’s intent to create a national mandate, and the applicability of  
 22 the ADA to jails and prisons, this Court should not give CFMG what it seeks: a ruling that  
 23 would allow it to have a business plan that operates jail health care facilities throughout the  
 24 State, but exempts it from the ADA obligations that other private health care providers  
 25 owe to their patients, who would essentially “park [their rights] at the prison gates.”  
 26 *Armstrong*, 124 F.3d at 1025. As the Ninth Circuit has clearly stated, it is now “axiomatic  
 27 that the ADA must be construed broadly in order to effectively implement the ADA’s  
 28 fundamental purpose of providing a clear and comprehensive national mandate for the  
 elimination of discrimination against individuals with disabilities.” *McGary v. City of*  
*Portland*, 386 F.3d 1259, 1268 (9th Cir. 2004) (internal quotation marks omitted). The

1 “serious and pervasive social problem,” 42 U.S.C. § 12101(a)(2), identified by Congress in  
2 adopting the ADA does not cease being a problem inside a jail, and the fact that the  
3 victims of such discrimination are incarcerated does not cast them outside the concerns and  
4 coverage of Title III of the ADA.

5 **CONCLUSION**

6 For the reasons set forth above, the Court should deny CFMG’s Motion to Dismiss.

7  
8 DATED: July 3, 2014

Respectfully submitted,

9 AMERICAN CIVIL LIBERTIES UNION  
10 FOUNDATION OF NORTHERN CALIFORNIA. INC.

11 Bv: /s/ Alan Schlosser  
Alan Schlosser

12 Attorneys for Plaintiffs  
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## **APPENDIX A**



**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Agreement No.: A-12200**

- a. Approve and authorize the Contracts and Purchasing Officer to sign an Agreement with California Forensic Medical Group, Inc. (CFMG) for Inmate Healthcare Services in Adult and Juvenile Detention Facilities for the Sheriff's Office and the Probation Department of Monterey County per Request for Proposals (RFP) #10303, with the initial Agreement term beginning on April 1, 2012 through June 30, 2015, including the option to extend the Agreement for up to two (2) additional one (1) year periods; and )
- b. Authorize the Contracts and Purchasing Officer to sign future Amendments to the Agreement where the Amendments do not significantly change the scope of work or cause an increase in the Agreement annual rates of more than fifteen percent (15%)..... )

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta, and carried by those members present, effective March 27, 2012, the Board hereby:

- a. Approved and authorized the Contracts and Purchasing Officer to sign an Agreement with California Forensic Medical Group, Inc. (CFMG) for Inmate Healthcare Services in Adult and Juvenile Detention Facilities for the Sheriff's Office and the Probation Department of Monterey County per Request for Proposal (RFP) #10303 with the initial Agreement term beginning on April 1, 2012 through June 30, 2015, including the option to extend the Agreement for up to two (2) additional one (1) year periods; and
- b. Authorized the Contracts and Purchasing Officer to sign future Amendments to the Agreement where the Amendments do not significantly change the scope of work or cause an increase in the Agreement annual rates of more than fifteen percent (15%).

PASSED AND ADOPTED on this 27<sup>th</sup> day of March 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter  
NOES: None  
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on March 27, 2012.

Dated: March 29, 2012

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy

MYA 230  
\*346

**AGREEMENT BETWEEN COUNTY OF MONTEREY AND  
CALIFORNIA FORENSIC MEDICAL GROUP  
FOR INMATE HEALTHCARE SERVICES  
FOR ADULT AND JUVENILE DETENTION FACILITIES**

This AGREEMENT is made and entered into by and between the Sheriff's Office and the Probation Department for the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County", and **California Forensic Medical Group, Inc. (CFMG)**, hereinafter referred to as "CONTRACTOR."

**SAMPLE RECITALS**

WHEREAS, County has invited proposals through the Request for Proposals (RFP # 10303) for **Inmate Healthcare Services for Adult and Juvenile Detention Facilities**, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

**1.0 PERFORMANCE OF THE AGREEMENT**

- 1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP # 10303 and in this AGREEMENT on the terms and conditions contained herein and in RFP # 10303. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

- AGREEMENT, including all attachments and exhibits
- Addenda #1 through #5 to RFP #10303
- RFP # 10303 dated May 16, 2011, including all attachments and exhibits
- CONTRACTOR'S Best and Final Proposal dated January 27, 2012
- CONTRACTOR'S Proposal dated June 27, 2011,
- Certificate of Insurance
- Additional Insured Endorsements

- Irrevocable Letter of Credit (to be submitted by CONTRACTOR to County within ten business days from the full execution of this AGREEMENT as per Section 15.2 herein)
- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including all attachments and exhibits, Addenda 1-5 to RFP #10303, RFP #10303 including all attachments and exhibits, CONTRACTOR'S Best and Final Proposal, CONTRACTOR'S Proposal, Certificate of Insurance, Additional Insured Endorsements, and Irrevocable Letter of Credit.
- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

## 2.0 SCOPE OF SERVICE

- 2.1 The Scope of Work for County Adult Detention is described in EXHIBIT 1A attached hereto.  
The Scope of Work for County Juvenile Detention is described in EXHIBIT 1B attached hereto.
- 2.2 **Outpatient and Clinic Settings:** The COUNTY shall make available to CONTRACTOR without charge all equipment, firms, services and space, and telephone (excluding toll calls) etc., that it has made available in the past to medical personnel providing medical services to inmates of COUNTY'S Detention Facilities. Detention treatment sites are described as follows:
  - 2.2.1 Adult Detention Men's Medical Outpatient Site: The main clinic is housed in the Core Building and contains a five (5) room outpatient housing unit with a total

capacity of six (6) beds that can accommodate intravenous treatment, centralized detoxification, and management of non-ambulatory inmates.)

- 2.2.2 Adult Detention Women's Medical Clinic Site: The women's clinic area consists of one private exam room. Prenatal and gynecological services are provided here. Female inmates needing other medical treatment which requires a skilled or specialized nurse practitioner will be sent to one of the five outpatient housing rooms located at the Adult Detention Men's Outpatient site.
- 2.2.3 Juvenile Hall Medical Office: The medical examination room is approximately nine feet by ten feet wide. It has a nurse's office adjacent to the medical examination room that measures approximately five feet by six feet wide. The medical examination room is equipped with a medical examination bed, desk, table, sink and cabinet space. The nurse's office is equipped with a desk, two chairs, drawers to store medical records and a table.
- 2.2.4 Youth Center Medical Office: The clinic is located in the Main Building. It has no outpatient housing, but has a fully equipped medical examination room. In the medical examination room there is an examination bed, desk, table, sink and cabinet space. The nurse's office is adjacent to the examination room and is equipped with a desk, chair and file cabinet.

### 3.0 TERM OF AGREEMENT

- 3.1 The initial term shall be effective on April 1, 2012 through and including June 30, 2015 with the option to extend the AGREEMENT for two (2) additional one (1) year periods.
  - 3.1.1 The County does not have to provide a reason if it elects not to renew.
  - 3.1.2 Both parties shall mutually agree upon term extension(s) in writing via an amendment.
- 3.2 CONTRACTOR must commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of the AGREEMENT.
  - 3.2.1 Both parties shall mutually agree upon rate changes in writing via an amendment in order for any rate change to be binding.
- 3.3 County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.

### 4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated for this AGREEMENT in accordance with the pricing sheet attached hereto as ATTACHMENT A. The amount quoted for services in the attached pricing sheet is

subject to adjust annually per the US Department of Labor's Consumer Price Index percentage changes for Urban Wage Earners and Clerical Workers; SF/Oakland/San Jose Medical Care, and the adjusted pricing shall become effective on July 1 of each year including 2012. Both parties agree that County shall pay CONTRACTOR for the cost of the Irrevocable Letter of Credit as per Section 15.0 herein in an annual amount not to exceed the quoted amount within ATTACHMENT A.

4.1.1 Both parties shall mutually agree to any and all price changes in writing in order for it to be binding.

4.1.2 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.

4.2 County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.

4.3 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.

4.4 CONTRACTOR shall levy no additional fees nor surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.

4.5 Tax:

4.5.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.

4.5.2 County is registered with the Internal Revenue Service, San Francisco office, registration number 94730022K. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

4.6 Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of County's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policy.htm>.

## 5.0 INVOICES AND PURCHASE ORDERS

5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to one of the two departments below as applicable:

Monterey County Sheriff's Office Accounting/Finance Division 1414 Natividad Rd. Salinas, CA 93906	Monterey County Probation Department Accounting/Finance Division 1422 Natividad Rd. Salinas, CA 93906
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5.2 CONTRACTOR shall reference "Inmate Healthcare Agreement per RFP #10303" on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically



or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

## 6.0 STANDARD INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

## 7.0 INSURANCE REQUIREMENTS

- 7.1 Evidence of Coverage:
  - 7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.1.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.1.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

7.3.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$3,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended



reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

## **8.0 HAZARDOUS MATERIAL DISPOSAL**

8.1 **HAZARDOUS MATERIALS:** CONTRACTOR, CONTRACTOR's employees, and subcontractors who are hired by CONTRACTOR to provide hazardous material disposal services pursuant to this AGREEMENT shall comply with the Superfund Amendments and Reauthorization Act (SARA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) while performing all services of this Agreement. CONTRACTOR shall be solely responsible for the transportation and disposal or release of any hazardous material. County does not take responsibility for the improper packaging and/or transportation of any hazardous materials ordered by the County while in transit or storage of services performed for this Agreement.

## **9.0 RECORDS, CONFIDENTIALITY, AND INFORMATION PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE**

- 9.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 9.2 HIPAA Compliance: CONTRACTOR agrees to operate its business in a manner as necessary to permit County to comply with its obligations under the Health Insurance Portability and Accountability Act of 1996, Subtitle F, Public Law 104-191, relating to the privacy and security of confidential health information, and any final regulations or rules promulgated by the U.S. Department of Health and Human Services thereunder (collectively, the "HIPAA Standards"). CONTRACTOR has agreed to and signed ATTACHMENT B; BUSINESS ASSOCIATE AGREEMENT attached hereto.
- 9.3 Ownership of Records: All records associated with inmate healthcare belong to and shall remain the property of County. When this AGREEMENT expires or terminates,

CONTRACTOR shall hand over to County all inmate records and reports which CONTRACTOR used or received from County to perform services under this AGREEMENT.

9.4 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT during the term of this AGREEMENT.

9.5 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

## 10.0 NON-DISCRIMINATION

- 10.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 10.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 10.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

## 11.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 11.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes.

CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.

- 11.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.
- 11.3 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 11.4 Any and all subcontractors hired by CONTRACTOR to provide services for this AGREEMENT shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed herein.

## 12.0 CONFLICT OF INTEREST

- 12.1 CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR'S services under this AGREEMENT.

## 12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws, that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.



### 13.0 EMERGENCY SITUATIONS

- 13.1 CONTRACTOR shall provide the name and contact information of a representative who shall be available 24 hours a day, 7 days a week, in the event of an emergency. During the emergency, CONTRACTOR shall ensure that County detention facilities have in supply all available supplies, materials, equipment and/or services to provide services as per this AGREEMENT at all times. 24 x 7 contact is as follows:

Emergency Contact Person's Name: Taylor Fithian, M.D.  
Emergency Contact's Phone Number: 831-320-0337

- 13.2 County expects emergency deliveries to occur within 4 hours of order placement and may be required during evenings, weekends, and holidays. Time is of the essence for delivery during emergency situations. Delivery location(s) and estimated arrival will be mutually agreed upon, by County and CONTRACTOR, at time of order and will be determined based on need and existing conditions. It is understood that current conditions, such as power outages, road closures, lock-downs, and damages to CONTRACTOR's facility and/or equipment, will be taken into consideration.

### 14.0 BACKGROUND CHECKS

- 14.1 CONTRACTOR shall be required to submit appropriate State level criminal background clearance(s) for all personnel required to work within County facilities that are deemed restricted or high security, including but not limited to the Sheriff's Office, Probation Department, 911 Center, and District Attorney's Office.
- 14.1.1 Individuals who are designated to provide services at any of the County Sheriff's facilities and Probation facilities are required to undergo fingerprinting and background checks through the Sheriff's main office, at no cost to CONTRACTOR.
- 14.1.2 COUNTY reserves the right to suspend any and all clearances to CONTRACTOR, CONTRACTOR's staff, agents and/or subcontractors with cause.
- 14.2 The required background and fingerprint checks SHALL be completed prior to allowing the personnel to work within any of the limited access facilities.

### 15.0 RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT

- 15.1 In the case of default by CONTRACTOR, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR, if any, or by suit against CONTRACTOR.

15.2 **Performance Security and Irrevocable Letter of Credit:** Due to the impracticality and difficulty of determining actual damages in the event of CONTRACTOR'S failure to perform, or breach of contract, the parties will agree in the contract that the amount of one million five hundred thousand dollars (\$1,500,000) is a reasonable amount for performance security. CONTRACTOR shall provide this performance security entirely through an Irrevocable Letter of Credit. The Irrevocable Letter of Credit shall be replenished to the full amount within 14 days of a withdrawal by County.

15.2.1 **CONTRACTOR shall have an Irrevocable Letter of Credit delivered to County's Contracts/Purchasing Officer within ten (10) business days after this AGREEMENT is executed which includes the access to the additional response penalties account.** County shall notify CONTRACTOR within five (5) business days if the letter is not acceptable. Failure to comply shall be grounds to terminate the AGREEMENT and County has the option of pursuing negotiations with another proposer. The address to deliver to County's Contracts/Purchasing Officer is:

County of Monterey Contracts/Purchasing Division  
ATTN: Michael Derr, Contracts/Purchasing Officer  
168 W. Alisal St., 3<sup>rd</sup> Floor  
Salinas, CA 93901

15.2.2 The minimum amount of the irrevocable letter of credit shall be \$1,500,000. It is to be issued only by a federally insured (FDIC) banking institution, acceptable to County, with a debt rating of 1A or higher by the FDIC; A or higher by Standard and Poor's; A or higher by Moody's investors; or have a comparable rating by another rating system acceptable to County. CONTRACTOR may renew their Irrevocable Letter of Credit annually provided there is no lapse, therefore any new Irrevocable Letter of Credit must be completed and submitted no less than 90 days prior to the current irrevocable letter of credit expiring.

15.2.4 CONTRACTOR's Irrevocable Letter of Credit will be used to assure the operation of inmate healthcare services, including, but not limited to, the conduct of the procurement process, and negotiation or related administrative expenses, and additional contract costs incurred as a result of contracting with a new CONTRACTOR, should the County terminate performance of the CONTRACTOR under the contract because of default.

15.2.5 **Forfeiture:** In the event the County terminates performance of the CONTRACTOR under the agreement in accordance with its terms, the CONTRACTOR will immediately forfeit the full amount of its performance security Irrevocable Letter of Credit as liquidated damages.

## 16.0 NOTICES

- 16.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

**TO COUNTY:**

Contracts/Purchasing Officer  
County of Monterey, Contracts/Purchasing  
168 W. Alisal Street, 3rd Floor.  
Salinas, CA 93901-2439  
Tel. No.: (831) 755-4990  
FAX No.: (831) 755-4969  
[DerrM@co.monterey.ca.us](mailto:DerrM@co.monterey.ca.us)

**TO CONTRACTOR:**

California Forensic Medical Group  
Attn: Dan Hustedt  
300 Foam St., Suite B  
Monterey, CA 93940  
Tel. No. (831) 649-8994  
FAX No. (831) 649-8286  
[Dan@cfmg.com](mailto:Dan@cfmg.com)

## 17.0 LEGAL DISPUTES

- 17.1 CONTRACTOR agrees that this AGREEMENT, and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 17.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 17.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 17.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.



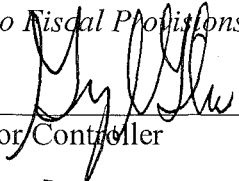
IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

  
Contracts/Purchasing Officer

Dated: 3-27-12

Approved as to Fiscal Provisions:

  
Deputy Auditor/Controller

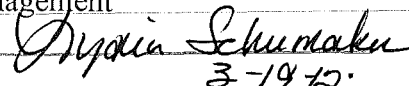
Dated: 3-19-12

RISK MANAGEMENT  
Approved as to Liability Provisions:

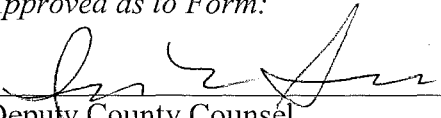
APPROVED AS TO INDEMNITY/

INSURANCE LANGUAGE

Risk Management

By:   
Dated: 3-19-12

Approved as to Form:

  
Deputy County Counsel

Dated: 3/15/2012

County Board of Supervisors' Agreement Number: A-12200

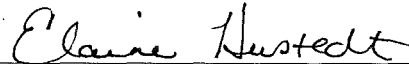
CONTRACTOR

By: 

Signature of Chair, President, or  
Vice-President

Dan Hustedt, V. P. Finance  
Printed Name and Title

Dated: 3-8-2012

By: 

(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)\*

Elaine Hustedt, Secretary  
Printed Name and Title

Dated: 3.8.12

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

## EXHIBIT 1A –SCOPE OF WORK FOR ADULT DETENTION

1A.1 SERVICES: All services performed by Contractor shall be carried out in conformance with CMA accreditation guidelines and CAC-Title 15.

1A.1.1 CONTRACTOR shall be responsible for the medical care, dental care, and mental health care of an inmate commencing with the booking, medical clearance, and physical placement of said inmate into the County Adult Detention Facilities, excluding the following;

(a) Prisoners on temporary release are not the responsibility of CONTRACTOR. Prisoners in the custody of other police or penal jurisdictions located outside of the Monterey County are not the responsibility of CONTRACTOR.

1A.1.2 CONTRACTOR shall determine the method, details and means of performing services.

1A.1.3 CONTRACTOR shall have a Medical Director who will be responsible to assure the quality of health care provided, and who will also supervise the practice of mid-level practitioners should such personnel be utilized.

### 1A.2 Receiving Screening:

1A.2.1 Deputies will complete the Intake Health Screening form at the Main Jail. The Intake Health Screening Form is attached to this RFP #10303 as EXHIBIT 5.

1A.2.2 CONTRACTOR nursing staff will respond to requests for consultation on screenings as required. Expected response time is between 3 and 5 minutes.

1A.2.3 Contractor shall provide medical services in an out-patient setting on-site.

1A.2.4 CONTRACTOR staff has the authority to make the final decisions for accepting or not accepting inmates into custody prior to outside elevation and treatment, based upon medical criteria which has been pre-defined and mutually agreed upon by CONTRACTOR and the Sheriff's Office.

### 1A.3 Health Inventory and Communicable Disease Screening:

1A.3.1 CONTRACTOR will perform a Health Inventory and Communicable Disease Screening, including a complete physical exam as per the Institute for Medical Quality (IMQ) criteria on all inmates who

reside in the Adult Facilities within 14 days. Included will be screening for tuberculosis and other communicable diseases. Lab tests will be performed per CMA guidelines and as medically indicated.

- 1A.3.2 The Health Inventory and Communicable Disease Screening will be completed by either the physician, the family nurse practitioner, physician's assistant, or registered nurse specifically trained to conduct health appraisals.

**1A.4 Detoxification from Drugs and Alcohol:**

- 1A.4.1 Detoxification services will be performed on-site under medical supervision. Severe cases shall be discussed by CONTRACTOR and County to determine whether or not an inmate needs to be sent to NMC for detoxing.
- 1A.4.2 Inmates will be assessed by CONTRACTOR's medical personnel when admitted to the detoxification cell. CONTRACTOR staff will check inmates in the detoxification cell upon admission, every six hours thereafter.
- 1A.4.3 CONTRACTOR staff will note the check on the log posted on the detoxification cell door. Deputies will monitor detoxification cells as per Title 15 and/or CMA guidelines.

**1A.5 Sick Call**

- 1A.5.1 Sick call will be conducted five days a week with emergency response on weekends.
- 1A.5.2 Sick call will be conducted in designated areas of the clinics or housing units, in as much privacy as security concerns allow.
- 1A.5.3 Inmates will be scheduled to be seen at sick call as soon as possible or as medically indicated.
- 1A.5.4 Sick call will be conducted by a Physician, Family Nurse Practitioner, Physician Assistant, or a Registered Nurse operating under standardized procedure.

**1A.6 Outpatient Housing Unit:**

- 1A.6.1 Outpatient housing unit services will be provided at the Main Jail as set forth in the most current CONTRACTOR Policy and Procedure Manual.

#### 1A.7 Off-Site Services:

- 1A.7.1 Hospitalization: CONTRACTOR shall arrange for all required hospitalization and pay for all required hospitalization excluding off-site mental health costs. However, CONTRACTOR shall not be responsible for any individual inmate's medical/surgical inpatient bill in excess of \$15,000 (fifteen thousand dollars) per episode. An "episode" means a single admission and discharge from a hospital. For hospitalized inmates, CONTRACTOR shall provide required medical/surgical inpatient hospital care, off-site specialty care, off-site clinic care, emergency room care, and other health-related ancillary services for those inmates who have been medically cleared, booked and physically placed in the Adult Facilities.
- 1A.7.2 All such care as described in 1A.7.1 above must be approved and referred by CONTRACTOR staff utilizing CONTRACTOR's Referral form.
- 1A.7.3 Holds: CONTRACTOR shall cooperate with, assist and advise Sheriff as requested to remove holds placed on hospitalized inmates as medically appropriate. CONTRACTOR shall develop with Sheriff a communications system to facilitate holds removal, to promptly and fully inform the Sheriff of holds status, and evaluate ongoing off-site costs.
- 1A.7.4 Natividad Medical Center: CONTRACTOR shall use the County hospital Natividad Medical Center for patients needing hospitalization and emergency services to the extent that hospital provides the required services and to the extent medically appropriate. CONTRACTOR may subcontract with other providers to the extent that the Natividad Medical Center in each individual case is unable to so provide services under this paragraph.
- 1A.7.5 Third Party Payor Information: CONTRACTOR shall provide outside providers with other third party payor information when available.
- 1A.7.6 Referrals upon Release: CONTRACTOR shall not make referrals for elective procedures that can safely be provided when an inmate is released from custody.
- 1A.7.7 CONTRACTOR shall have a working relationship with an ophthalmologist located within the city of Salinas California with whom inmates with eye injuries or other serious eye problems can be sent out to. CONTRACTOR shall bear the cost of these visits.

1A.7.8 Other off-site services are described herein in Sections 1A.4.1, 1A.10.2, 1A.10.4, and 1A.11.5.

**1A.8 Laboratory, X-Ray, Medical Supplies, Equipment, and Medical Record Supplies:**

- 1A.8.1 CONTRACTOR shall be responsible for the purchase and provision of required, medical supplies, and medical record supplies. Critical supplies shall be stocked and available on site.
- 1A.8.2 CONTRACTOR shall be responsible for purchasing required laboratory services and x-ray services.
- 1A.8.3 CONTRACTOR shall utilize a mobile x-ray unit at no additional cost to County to provide x-rays on-site so as to reduce or eliminate the need for transporting inmates who need x-rays.

**1A.9 On-Site Emergency Services:**

- 1A.9.1 Contractor shall ensure FNP/PA/Physician personnel are available to provide consultations on-site by phone to nursing staff and to come to the facilities as required to provide treatments 24 hours a day, seven days a week.

**1A.10 Mental Health Services:**

- 1A.10.1 CONTRACTOR shall provide on-site mental health care services and shall do so in satisfaction with all requirements of the California Medical Association (CMA) standards and Title 15 of the California Administrative Code. Furthermore, CONTRACTOR shall meet all requirements of any other provision of law as it pertains to the provision of mental health care to inmates. Outpatient mental health services include but are not limited to screening of inmates with psychiatric complaints, medication verification, assessments, monitoring and administration, counseling, crisis intervention, clearance to and from safety cells/restraints, and the development and implementation of a socialization program and discharge plan.
- 1A.10.2 For inmates requiring inpatient mental health services, CONTRACTOR shall transfer the patient to Natividad Medical Center. CONTRACTOR shall provide all evaluations of inmates per penal codes 4011.6 and 4011.8 prior to referral to the Natividad Medical Center. This section shall not supersede the authority of the court to order a prisoner to a 72-hour mental health facility.
- 1A.10.3 On-site mental health services shall be provided at the Main Jail and at the adjacent Adult Rehabilitation Center.

1A.10.4 CONTRACTOR shall not be responsible for any off-site Mental Health costs.

**1A.11 Dental Services:**

1A.11.1 CONTRACTOR will be responsible for providing routine and emergency dental services to inmates at the Main Jail for inmates in accordance with CMA standards.

1A.11.2 The dental services will be provided on-site at the Main Jail.

1A.11.3 CONTRACTOR shall provide both 1 Dentist and 1 Dental Assistant for dental services available at least 16 hours per week.

1A.11.4 Inmates requesting dental services will be prioritized by urgency and will be scheduled to see the dentist as soon as possible, as medically indicated during the screening at sick call.

1A.11.5 Medically necessary oral surgery that cannot safely be delayed until release from custody will be referred to outside specialists. CONTRACTOR shall not be responsible for any individual inmate's oral surgery bill in excess of \$15,000 (fifteen thousand dollars) per surgery.

**1A.12 Prosthesis:**

1A.12.1 Medical and dental prosthesis and corrective eyeglasses are provided by CONTRACTOR at no additional cost to County when the health of the inmate would otherwise be adversely affected as directed by the responsible physician or dentist.

**1A.13 Pharmaceutical Services:**

1A.13.1 CONTRACTOR nursing staff will be responsible for administering medications to inmates.

1A.13.2 Medications shall principally be administered on a twice per day (BID) regime, however, CONTRACTOR shall ensure medication administration for all medications required and prescribed three (TID) or four (QID) times per day.

1A.13.3 As-needed (PRN) medications will principally be administered on a BID regime.

1A.13.4 CONTRACTOR nursing staff will respond to requests for PRN



medications at other times on an emergency basis as medically required.

1A.13.5 All pharmaceuticals shall be used, stored, inventoried, and administered in accordance with all applicable laws, guidelines, policy and procedure.

1A.13.6 CONTRACTOR is responsible for the cost of all pharmaceuticals administered.

**1A.14 Food Service Health Clearance:**

1A.14.1 Deputies shall provide a list to CONTRACTOR on a weekly basis of inmates that they wish to have work in the kitchen. CONTRACTOR shall provide a health clearance for each of these inmates and communicate with Deputies to let them know whether or not the inmate is cleared to work in the kitchen.

**1A.15 Work Furlough:**

1A.15.1 CONTRACTOR shall evaluate Work Furlough inmates who present urgent or emergency complaints, and shall provide emergency response, first aid treatment, and/or referral, as appropriate.

1A.15.2 CONTRACTOR will not be financially responsible for medical care provided for Work Furlough inmates in the community or pharmaceuticals ordered by health providers in the community when such care is initiated by Work Furlough inmates while outside of the facilities.

**1A.16 Inmate Workers Compensation Services:**

1A.16.1 CONTRACTOR shall provide first aid and medical screening of inmate workers claiming injury during the course of their work assignments while incarcerated in the County Jail.

1A.16.2 Inmates determined to have injuries that require treatment beyond first aid or further diagnostic services will be referred to Natividad Medical Center Occupational Health Center for treatment.

**1A.17 Self-Contained Breathing Apparatus (SCBA) Medical Screening:**

1A.17.1 CONTRACTOR shall provide review of OSHA medical screening forms of all Sheriff's personnel assigned to the Corrections Bureau who may wear an emergency self-contained breathing apparatus (SCBA).

1A.17.2 The medical screening form review shall be completed by a physician or other licensed health care professional.



1A.17.3 This section shall be reviewed six (6) months from the date of implementation of this contract for the purpose of determining workload impact and will continue upon mutual consent of County and CONTRACTOR.

**1A.18 Swabbed DNA Samples for Sex Offenders and Penal Code Section 7500 et. seq.:**

1A.18.1 All swab testing per this penal code section 7500 et seq. shall be performed by County.

**1A.19 Emergency First Aide (Non-inmate):**

1A.19.1 CONTRACTOR shall respond and provide emergency first aid to county staff and/or visitors if necessary.

**1A.20 Deputy Training:**

1A.20.1 CONTRACTOR will provide up to eight hours of bi-annual training for Deputies concerning health care issues in the jail.

**1A.21 Other Critical Services:**

1A.21.1 CONTRACTOR agrees to provide the following services adhering to CMA and Title 15 guidelines: prenatal care, inmates in isolation services, safety cell services, monitoring inmates in restraints, delousing and scabies, monitoring syringes and needles, preventative care, and pharmaceutical reviews.

1A.21.2 Disposal of contaminated waste and bagging of contaminated linens shall be the responsibility of CONTRACTOR who shall comply with all applicable laws, ordinances and codes concerning the disposal of contaminated bio-hazardous waste.

**1A.22 Special Medical Diets:**

1A.22.1 CONTRACTOR staff will evaluate the need for and will prescribe medically required special diets for inmates as appropriate.

1A.22.2 CONTRACTOR will coordinate with Food Service management staff regarding the types of special medical diets which can be offered to the inmate population.

**1A.23 Medical Records:**

1A.23.1 CONTRACTOR shall be the custodian of the active and inactive medical

records generated after CONTRACTOR began operations. However, Upon termination of the AGREEMENT all such records will be turned over to County.

1A.23.2 The medical records are and shall always be the property of County.

1A.23.3 CONTRACTOR shall adhere to all laws relating to confidentiality of medical records. CONTRACTOR and CONTRACTOR's staff

1A.23.4 CONTRACTOR shall be responsible for the maintenance of all medical records. CONTRACTOR shall maintain all records in accordance with Title 15, California Administrative Code, Section 1205 and CMA accreditation guidelines.

1A.23.5 Pertinent medical information will be prepared to accompany all inmates when transferring to other detention/correctional facilities.

**1A.24 Reporting (Adult Facilities):**

1A.24.1 No later than the third Friday of the following month, CONTRACTOR shall submit to the County statistics and information on the month's activities. Included in the above reports shall be statistical reports concerning the use of psychotropic drugs.

1A.24.2 CONTRACTOR shall submit once annually a report to County of compliance with current California laws, regulations and codes relating to County's Detention Facilities.

**1A.25 Quality Assurance Program (Adult Facilities):**

1A.25.1 CONTRACTOR shall provide County with a copy of overall Quality Assurance plan within 90 days of the AGREEMENT term start date and shall continue to provide any updates or revisions of same in a timely manner. Quality Assurance plan will be adopted with the mutual concurrence of CONTRACTOR and County.

1A.25.2 CONTRACTOR shall maintain a comprehensive quality assurance plan during the term of the AGREEMENT.

1A.25.3 CONTRACTOR shall provide County upon request with statistical summaries of quality assurance activities.

**1A.26 Other Administrative Requirements:**

1A.26.1 CONTRACTOR shall be responsible for responding to inmate grievances concerning medical care.)

1A.26.2 CONTRACTOR shall be responsible for allowing medical personnel to testify concerning civil rights suits or any writs of habeas corpus filed by inmates. CONTRACTOR must also respond in writing to Deputies concerning any such writs of habeas corpus or federal civil rights suits.

**1A.27 Personnel Services:**

1A.27.1 CONTRACTOR shall develop and maintain up-to-date written policy and procedure, protocol, and reference manuals in compliance with CMA accreditation standards and CAC, Title 15. All such documentation shall be submitted to County within 90 days of the AGREEMENT term start date.

1A.27.2 New policies and/or procedures will not be implemented or existing policies and procedures revised by either party without the mutual concurrence of CONTRACTOR and County.

A1.27.3 There will at all times be an employee of CONTRACTOR designated as liaison person in the absence of the Medical Director.

1A.27.4 CONTRACTOR will ensure that all of its new employees are afforded an orientation period for a minimum of 2 weeks.

A1.27.5 CONTRACTOR shall be responsible for time and attendance accountability and provide appropriate records to the COUNTY upon demand.

A1.27.6 CONTRACTOR will not be paid for staff positions that remain vacant for longer than thirty-days (30).

1A.27.7 CONTRACTOR shall provide in-service training for its personnel. Topics will be identified by CONTRACTOR's on-site Program/Facility Manager who will also maintain records on subject matter and employee participation.

1A.27.8 COUNTY shall provide for the safety and security of CONTRACTOR'S personnel in the same manner as provided for COUNTY employees working in the Detention Facilities.

1A.27.9 Copies of licenses and/or records of certification for all medical personnel are to be furnished by CONTRACTOR, who must at all times have them available for examination by the COUNTY and/or by representative of the COUNTY.

1A.27.10 CONTRACTOR's staff shall safeguard all County. Medical equipment shall be used only by those trained and qualified in its use, and

CONTRACTOR shall be held responsible for any and all damage resulting from any act, negligence or carelessness on the part of CONTRACTOR's staff.

**1A.28 Inmate Research Restrictions:**

- 1A.28.1 No research projects involving inmates, other than projects limited to the use of information from records compiled in the ordinary delivery of patient care activities, shall be conducted without the prior written consent of the County Sheriff. The conditions under which research shall be conducted shall be agreed to by CONTRACTOR and the County Sheriff, and shall be governed by written guidelines. In every case, the written informed consent of each inmate who is a subject of a research project shall be obtained prior to the inmate's participation as a subject.

**EXHIBIT 1B –SCOPE OF WORK FOR JUVENILE DETENTION**

**1B.1 SERVICES:** All services performed by Contractor shall be carried out in conformance with CMA accreditation guidelines and CAC-Title 15.

1B.1.1 CONTRACTOR shall be responsible for the medical care of a juvenile commencing with the booking, medical clearance, and physical placement of said juvenile into the Monterey County Juvenile Hall and Youth Center facilities, excluding the following;

- (a) Juveniles on temporary release are not the responsibility of CONTRACTOR. Juveniles in the custody of other police or penal jurisdictions located outside of the Monterey County are not the responsibility of CONTRACTOR.

1B.1.2 CONTRACTOR shall determine the method, details and means of performing services.

1B.1.3 CONTRACTOR shall have a Medical Director who will be responsible to assure the quality of health care provided, and who will also supervise the practice of mid-level practitioners should such personnel be utilized.

**1B.2 Receiving Screening:**

1B.2.1 Juvenile Institution Officers will complete the Intake Health Screening form at Juvenile Hall.

1B.2.2 CONTRACTOR nursing staff will respond to requests for consultation on screenings as required.

1B.2.3 Whenever medically appropriate, CONTRACTOR shall provide medical services on-site.

1B.2.4 CONTRACTOR staff has the authority to make the final decisions for accepting or not accepting juveniles into custody prior to any necessary outside evaluation and treatment, based on mutually agreed upon medical criteria between institutional staff, CONTRACTOR and the “outside” medical evaluator.

**1B.3 Medical Examination:**

1B.3.1 CONTRACTOR will perform a medical examination, including a Health Inventory and Communicable Disease Screening, on every juvenile who is admitted to Juvenile Hall within 96 hours, in accordance with CAC and CMA standards. Included will be

screening for tuberculosis and other communicable diseases. Lab tests will be performed per CMA guidelines and as medically indicated.

- 1B.3.2 The medical examination will be completed by either the physician, the family nurse practitioner, physician's assistant, or registered nurse specifically trained to conduct health appraisals.

**1B.3 Detoxification from Drugs and Alcohol:**

- 1B.3.1 Detoxification services, when performed at Juvenile Hall, will be under medical supervision.
- 1B.3.2 When no medical staff is present, juveniles presenting "withdrawal" symptoms prior to booking will immediately be sent to Natividad Medical Center for clearance.

**1B.4 Sick Call**

- 1B.4.1 Sick call will be conducted five days a week with emergency response available at all times.
- 1B.4.2 Sick call will be conducted in designated areas of the juvenile detention facilities with as much privacy as security concerns allow.
- 1B.4.3 Juveniles will be scheduled to be seen at sick call as soon as possible or as medically indicated.
- 1B.4.4 Sick call will be conducted by a Physician, Family Nurse Practitioner, Physician Assistant, or a Registered Nurse operating under standardized procedure.

**1B.5 Off-Site Services:**

- 1B.5.1 Hospitalization: CONTRACTOR shall arrange for all required hospitalization and pay for all required hospitalization excluding off-site mental health costs. However, CONTRACTOR shall not be responsible for any individual juvenile's medical/surgical inpatient bill in excess of \$15,000 (fifteen thousand dollars) per episode. An "episode" means a single admission and discharge from a hospital. CONTRACTOR shall provide required medical/surgical inpatient hospital care, off-site specialty care, off-site clinic care, emergency room care, and other health-related ancillary services for those juveniles who have been medically cleared, booked and physically placed in the Juvenile Facilities.

- 1B.5.2 All such care as described in 1B.7.1 above must be approved and referred by CONTRACTOR staff utilizing CONTRACTOR's Referral form.
- 1B.5.3 Holds: CONTRACTOR shall cooperate with, assist and advise Probation Department Management as requested to remove holds placed on hospitalized juveniles as medically appropriate. CONTRACTOR shall develop with Probation Department Management a communications system to facilitate holds removal, to promptly and fully inform the Probation Department Management of holds status, and evaluate ongoing off-site costs.
- 1B.5.4 Natividad Medical Center: CONTRACTOR shall use the County hospital Natividad Medical Center for juveniles needing hospitalization and emergency services to the extent that hospital provides the required services and to the extent medically appropriate. CONTRACTOR may subcontract with other providers to the extent that the Natividad Medical Center in each individual case is unable to so provide services under this paragraph.
- 1B.5.5 Third Party Payor Information: CONTRACTOR shall provide outside providers with other third party payor information when available.
- 1B.5.6 Referrals upon Release: CONTRACTOR shall not make referrals for elective procedures that can safely be provided when a juvenile is released from custody.
- 1B.5.7 CONTRACTOR shall have a working relationship with an ophthalmologist located within the city of Salinas California with whom inmates with eye problems can be sent out to. CONTRACTOR shall bear the cost of these visits.
- 1B.5.8 Other off-site services are described herein in Sections 1B.4.2, 1B.10.1, and 1B.11.1.

**1B.6 Laboratory, X-Ray, Pharmaceuticals, Medical Supplies, Equipment, and Medical Record Supplies:**

- 1B.6.1 CONTRACTOR shall be responsible for the cost, purchase and provision of required pharmaceuticals, medical supplies, and medical record supplies. Critical supplies shall be stocked and available on site.
- 1B.6.2 CONTRACTOR shall be responsible for purchasing required laboratory services and x-ray services.



1B.6.3 CONTRACTOR shall utilize a mobile x-ray unit at no additional cost to County to provide x-rays on-site so as to reduce or eliminate the need for transporting inmates who need x-rays.

**1B.7 On-Site Emergency Services:**

1B.7.1 Contractor shall provide FNP/PA/Physician personnel to provide consultations to nursing staff and to come to the facilities as required to provide treatments 24 hours a day, seven days a week.

**1B.8 Mental Health Services:**

1B.8.1 CONTRACTOR shall refer all cases requiring mental health services to the Monterey County Health Department, Behavioral Health Division in accordance with established procedures. County's BH will retain responsibility for the mental health care needs of these inmates in juvenile detention following intake screening.

**1B.9 Dental Services:**

1B.9.1 Routine dental work and orthodontic work are arranged by the parents of the juveniles. CONTRACTOR shall not bear the cost of routine dental work or orthodontics for juveniles.

1B.9.2 CONTRACTOR shall be responsible for providing an evaluation and referral for any emergency dental services to juveniles at the detention facilities in accordance with CMA standards.

**1B.10 Prosthesis:**

1B.10.1 Medical and dental prosthesis are provided by CONTRACTOR when the health of the juvenile would otherwise be adversely affected as directed by the responsible physician or dentist.

**1B.11 Pharmaceutical Services:**

1B.11.1 CONTRACTOR nursing staff will be responsible for administering medications at the Juvenile Detention Facilities.

1B.11.2 Medications shall principally be administered three times a day according to Exhibit 2.

1B.11.3 Medications on "as needed basis" will principally be administered on a twice-a-day regime.

1B.11.4 CONTRACTOR nursing staff will respond to requests for "as needed" medications at other times on an emergency basis as medically required.

1B.11.5 All pharmaceuticals shall be used, stored, inventoried, and administered in accordance with all applicable laws, guidelines, policy and procedure.

**1B.12 Food Service Health Clearance: (Youth Center)**

1B.12.1 Juvenile Institution Officers shall provide a list to CONTRACTOR on a weekly basis of juveniles that they wish to have work in the kitchen.

1B.12.2 CONTRACTOR shall provide a health clearance for each of these juveniles and communicate with juvenile institutional staff to let them know whether or not the juvenile is cleared to work in the kitchen.

**1B.13 Emergency First Aid (Non-inmate):**

1B.13.1 CONTRACTOR shall respond and provide emergency first aid to county staff and/or visitors.

**1B.14 Training:**

1B.14.1 CONTRACTOR will provide up to eight hours of bi-annual training for Juvenile Institution Officers concerning health care issues in the juvenile facilities.

**1B.15 Other Critical Services:**

1B.15.1 CONTRACTOR agrees to provide the following services adhering to CMA and Title 15 guidelines: prenatal care, juveniles in isolation services, safety cell services, monitoring juveniles in restraints, delousing and scabies, monitoring syringes and needles, preventative care, and pharmaceutical reviews.

1B.15.2 Disposal of contaminated waste and bagging of contaminated linens shall be the responsibility of CONTRACTOR who shall comply with all applicable laws, ordinances and codes concerning the disposal of contaminated bio-hazardous waste.

**1B.16 Special Medical Diets:**

1B.16.1 CONTRACTOR staff will evaluate the need for and will prescribe medically required special diets for juveniles as appropriate.

1B.16.2 CONTRACTOR will coordinate with Food Service management staff regarding the types of special medical diets which can be offered to the juvenile population.

**1B.17 Medical Records:**

1B.17.1 CONTRACTOR shall be the custodian of the active and inactive medical records generated after CONTRACTOR began operations. However, Upon termination of the AGREEMENT all such records will be turned over to County.

1B.17.2 The medical records shall always be the property of County.

1B.17.3 CONTRACTOR shall adhere to all laws relating to confidentiality of medical records.

1B.17.4 CONTRACTOR shall be responsible for the maintenance of all medical records. CONTRACTOR shall maintain all records in accordance with Title 15, California Administrative Code, Section 1205 and CMA accreditation guidelines.

1B.17.5 Pertinent medical information will be prepared to accompany all juveniles when transferring to other detention/correctional facilities.

**1B.18 Reporting**

1B.18.1 No later than the third Friday of the following month, CONTRACTOR shall submit to the County statistics and information on the month's activities. Included in the above reports shall be statistical reports concerning the use of psychotropic drugs.

1B.18.2 CONTRACTOR shall submit once annually a report to County of compliance with current California laws, regulations and codes relating to County's Detention Facilities.

**1B.19 Quality Assurance Program :**

1B.19.1 CONTRACTOR shall provide County with a copy of overall Quality Assurance plan and any updates or revisions of same. Within 90 days Quality Assurance plan will be adopted with the mutual concurrence of CONTRACTOR and County.

1B.19.2 CONTRACTOR shall maintain a comprehensive quality assurance plan during the term of the AGREEMENT.

1B.19.3 CONTRACTOR shall provide County upon request with statistical summaries of quality assurance activities.

**1B.20 Other Administrative Requirements:**

1B.20.1 CONTRACTOR shall be responsible for responding to juvenile grievances concerning medical care.

1B.20.2 CONTRACTOR shall be responsible for allowing medical personnel to testify concerning civil rights suits or any writs of habeas corpus filed by juveniles. CONTRACTOR must also respond in writing to Juvenile Institution Officers concerning any such writs of habeas corpus or federal civil rights suits.

**1B.21 Personnel Services:**

1B.21.1 CONTRACTOR shall develop and maintain up-to-date written policy and procedure, protocol, and reference manuals in compliance with CMA accreditation standards and CAC, Title 15.

1B.21.2 New policies and/or procedures will not be implemented or existing policies and procedures revised by either party without the mutual concurrence of CONTRACTOR and County.

1B.21.3 There will at all times be an employee of CONTRACTOR designated as liaison person in the absence of the Medical Director.

1B.21.4 CONTRACTOR will ensure that all of its new employees are afforded an orientation period.

1B.21.5 CONTRACTOR shall be responsible for time and attendance accountability and provide appropriate records to the County upon demand.

1B.21.6 CONTRACTOR will not be paid for staff positions that remain vacant for longer than thirty-days (30).

1B.21.7 CONTRACTOR shall provide in-service training for its personnel. Topics will be identified by the Program Manager who will also maintain records on subject matter and employee participation.

1B.21.8 County shall provide for the safety and security of CONTRACTOR's personnel in the same manner as provided for County employees working in the Detention Facilities.

1B.21.9 Copies of licenses and/or records of certification for all medical personnel are to be furnished by CONTRACTOR, who must at all times have them available for examination by County and/or by representative of the County.

1B.21.10 CONTRACTOR's staff shall safeguard all County property. Medical equipment shall be used only by those trained and qualified in its use, and CONTRACTOR shall be held responsible for any and all damage resulting from any act, negligence or carelessness on the part of CONTRACTOR's staff.

**1B.22 Juvenile Research Restrictions:**

1B.22.1 No research projects involving juveniles, other than projects limited to the use of information from records compiled in the ordinary delivery of patient care activities, shall be conducted without the prior written consent of the Chief Probation Officer or designee. The conditions under which research shall be conducted shall be agreed to by CONTRACTOR and the Chief Probation Officer or designees, and shall be governed by written guidelines. In every case, the written informed consent of each juvenile who is a subject of a research project shall be obtained, in addition to that of their parent or guardian, prior to the juvenile's participation as a subject.

## EXHIBIT 2 - MINIMAL COUNTY STAFFING PATTERN

Agreement between CFMG and County of Monterey for Inmate Healthcare Services per RFP #10303

POSITION	S	M	T	W	T	F	S	HRS	FTE	FAC
Program Manager		8-4	8-4	8-4	8-4	8-4		40	1.0	Both adult/juv
Director of Nursing		8-4	8-4	8-4	8-4	8-4		40	1.0	Both adult/juv
L.V.N.	7-3	7-3	7-3	7-3	7-3	7-3	7-3	56	1.4	Jail
L.V.N.	7-3	7-3	7-3	7-3	7-3	7-3	7-3	56	1.4	Jail
R.N.	7-3	7-3	7-3	7-3	7-3	7-3	7-3	56	1.4	Jail
P.A./FNP		7-3	7-3	7-3	7-3	7-3		40	1.0	Jail
Medical Record Supervisor		7-3	7-3	7-3	7-3	7-3		40	1.0	Jail
C.N.A.	7-3	7-3	7-3	7-3	7-3	7-3	7-3	56	1.4	Jail
L.V.N.	1-9	1-9	1-9	1-9	1-9	1-9	1-9	56	1.4	Jail
R.N.	3-11	3-11	3-11	3-11	3-11	3-11	3-11	56	1.4	Jail
L.V.N.	3-11	3-11	3-11	3-11	3-11	3-11	3-11	56	1.4	Jail
C.N.A.	3-11	3-11	3-11	3-11	3-11	3-11	3-11	56	1.4	Jail
C.N.A.	3-11	3-11	3-11	3-11	3-11	3-11	3-11	56	1.4	Jail
R.N.	11-7	11-7	11-7	11-7	11-7	11-7	11-7	56	1.4	Jail
L.V.N.	11-7	11-7	11-7	11-7	11-7	11-7	11-7	56	1.4	Jail
C.N.A.	11-7	11-7	11-7	11-7	11-7	11-7	11-7	56	1.4	Jail
R.N.		6:30-2:30	6:30-2:30	6:30-2:30	6:30-2:30	6:30-2:30		40	1.0	J. Hall
R.N.		6-2	6-2	6-2	6-2	6-2		40	1.0	Y. Center
CLERK/CNA		7-3	7-3	7-3	7-3	7-3		40	1.0	J. Hall
L.V.N.		2-6	2-6	2-6	2-6	2-6		20	0.5	J. Hall
L.V.N. pill pass	AM/Noon/PM	8:30p	8:30p	8:30p	8:30p	8:30p	AM/Noon/PM	12-20	.30-.50	J.Hall/Y. Center



Medical Director/ Physician	40 hours To Be Determined	40	1	All
Psychiatrist	15 hours To Be Determined	15	0.38	Jail
Dentist	16 hours To Be Determined	16	0.4	Jail
Dental Assistant	16 hours To Be Determined	16	0.4	Jail
Physician On-Call	24 hours a day, seven days a week			Both
Psychiatrist On-Call	24 hours a day, seven days a week			Both
MFT/LCSW	20 hours per week	20	0.5	Jail
Psychiatric RN	40 hours per week	40	1	Jail
Days	Adult: 6-10, 6-2, 7-3, 8-4, 10-6      Juvenile: 6-2, 6:30-2:30, 7-3, 2-6			
Evenings	Adult: 1-9, 3-11, 5-1			
Nights	Adult: 11-7			

Exhibit 2

- 11) Contractual language to include a re-opener if Title XV or IMQ requirements require additional services during the contract term.

RFP #10303 BAFO PRICING 01/23/12 PER STAFFING PATTERNS LISTED IN RFP EXHIBIT 2  
Please fill in the costs for each row in the table below. Please be sure to include additional recommended costs on page two (add additional pages if needed). Costs should be based on the Staffing patterns in EXHIBIT 2.

**A1. ADULT DETENTION:**

A1.1 Please break down your cost structure per the amount quoted above as follows:

1<sup>st</sup> Year Medical Staffing Costs per EXHIBIT 2: \$3,021,679

Percent of increase for year two: % Medical CPI Percentage San Francisco/Oakland Feb. to Feb.

Percent of increase for year three: % Medical CPI Percentage San Francisco/Oakland Feb. to Feb.

Population 1065

Include a cost adjustment mechanism for census increases or decreases. Cost Adjustment Formula: Per Diem Rate \$4.02

1<sup>st</sup> Year Administrative Costs: \$1,804,516

A1.2 Describe other adult detention healthcare services you recommend and include the position, facility, hours, and annual cost:

A1.3 TOTAL PRICE FOR FIRST YEAR OF SERVICES INCLUSIVE OF ALL COSTS EXCEPT IRREVOCABLE LETTER OF CREDIT: \$4,826,195

(Please include the estimated cost for the 1<sup>st</sup> year of the \$1.5 million dollar Irrevocable Letter of Credit separately at the end of this Pricing Sheet)

**PRICING - JUVENILE**

**PRICE PROPOSAL FOR MONTEREY COUNTY  
INMATE HEALTHCARE SERVICES FOR  
JUVENILE DETENTION FACILITIES  
BEST AND FINAL PRICE PROPOSAL DATED JANUARY 27, 2012**

The comprehensive medical services price proposal provided on the following pages is based upon the following assumptions. This best and final price proposal supersedes and replaces our prior price proposal dated June 27, 2011 and all assumptions are set forth herein.

- 1) Provision of the staffing plan as provided with this proposal.
- 2) Based on serving a population of 160 juveniles.
- 3) A per diem charge of \$3.02 for an ADP of over 160 juveniles on a quarterly basis.
- 4) Per diem charge is intended to cover variable costs only. If the population significantly increases, it is possible that additional staffing may be needed and can be negotiated separately.
- 5) Medical/ Surgical Inpatient episode catastrophic limit of \$15,000.
- 6) Provision of 4011.6 and 4011.8 evaluations for juveniles in custody.
- 7) No responsibility for off-site or on-site mental health services to include diagnostics and pharmaceuticals ordered by county mental health staff.
- 8) Annual percentage increase based on the Urban wage earners and clerical workers San Francisco/Oakland/San Jose medical care CPI percentage change from February to February of each year. The percentage change will apply to the base price and the per diem rate.
- 9) Provision of current insurance program.

**J1. JUVENILE DETENTION:**

**J1.1 Please break down your cost structure per the amount quoted above as follows:**

1<sup>st</sup> Year Medical Staffing Costs per EXHIBIT 2: \$419,745

Percent of increase for year two: % Medical CPI Percentage San Francisco/Oakland Feb. to Feb

Percent of increase for year three: % Medical CPI Percentage San Francisco/Oakland Feb. to Feb

Include a cost adjustment mechanism for census increases or decreases. Cost Adjustment Formula: Population 160  
Per Diem Rate \$3.02

1<sup>st</sup> Year Administrative Costs: \$227,168

**J1.2 Describe other juvenile detention healthcare services you recommend and include the position, facility, hours, and annual cost:**

**J1.3 TOTAL PRICE FOR FIRST YEAR OF SERVICES INCLUSIVE OF ALL COSTS EXCEPT IRREVOCABLE LETTER OF CREDIT: \$646,913**  
(Please include the estimated cost for the 1<sup>st</sup> year of the \$1.5 million dollar Irrevocable Letter of Credit separately below)

Estimated CONTRACTOR cost for \$1,500,000 Irrevocable Letter of Credit for a one (1) year period only: \$15,000

**PRICING ADULT**

**PRICE PROPOSAL FOR MONTEREY COUNTY  
INMATE HEALTHCARE SERVICES FOR  
ADULT DETENTION FACILITIES  
BEST AND FINAL PRICE PROPOSAL DATES JANUARY 27, 2012**

The comprehensive medical, mental health and dental services price proposal provided on the following pages is based upon the following assumptions. This best and final price proposal supersedes and replaces our prior price proposal dated June 27, 2011 and all assumptions are set forth herein.

- 1) Provision of the staffing plan as provided with this proposal.
- 2) Based on serving a population of 1050 adults.
- 3) A per diem charge of \$4.02 for an ADP of over 1050 adults on a quarterly basis.
- 4) Per Diem charge is intended to cover variable costs only. If the population significantly increases it is possible that additional staffing may be needed and can be negotiated separately.
- 5) Medical/ Surgical inpatient episode catastrophic limit of \$15,000.
- 6) Our current agreement includes a \$20,000 annual aggregate limit for HIV medications. This proposal increases the annual aggregate limit for HIV medications to \$30,000 commencing July 1, 2012.
- 7) Provision of 4011.6 and 4011.8 evaluations for inmates in custody.
- 8) No responsibility for off-site mental health costs.
- 9) Annual percentage increase based on the Urban wage earners and clerical workers San Francisco/Oakland/San Jose medical care CPI percentage change from February to February of each year. This percentage will apply to the base price and the per diem rate.
- 10) Provision of current insurance program.



## ATTACHMENT B: BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the 1st of April, 2012, by and between the COUNTY OF MONTEREY, hereinafter referred to as "Covered Entity", and California Forensic Medical Group, Inc. (CFMG), hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the County of Monterey to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled \_\_\_\_\_ and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information,

that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

## II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

- (i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
  - (A) the disclosure is required by law; or
  - (B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- (ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- (c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

#### IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

#### V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:  
COUNTY OF MONTEREY

By: 

CONTRACTS/PURCHASING OFFICER  
COUNTY OF MONTEREY

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

Date: 3-27-12

BUSINESS ASSOCIATE:

By: Dan Mustadt

Title: V.P. Finance

Date: 3-8-2012