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Tri-City Mental Health Authority  
Administration Office  
1717 North Indian Hill Boulevard, Suite B,  
Claremont, CA 91711-2788  
909.623.6131 p / 909.623.4073 f

Founded by Pomona, Claremont, and La Verne  
in 1960



Jed Leano (Claremont), Chair  
John Nolte (Pomona), Vice-Chair  
Carolyn Cockrell (La Verne), Board Member  
Paula Lantz (Pomona), Board Member  
Wendy Lau (La Verne), Board Member  
Elizabeth Ontiveros-Cole (Pomona), Board Member  
Ronald T. Vera (Claremont), Board Member

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**SPECIAL MEETING**  
**GOVERNING BOARD AGENDA**

**WEDNESDAY, FEBRUARY 1, 2023**  
**5:00 P.M.**

**MEETING LOCATION**

There will be no in-person public meeting location. On September 16, 2021, the Legislature amended the Brown Act provisions regarding teleconferencing through Assembly Bill No. 361, codified under Government Code § 54953. Accordingly, the Governing Board will hold this public meeting via teleconference and the public seeking to observe and to address the Governing Board may participate telephonically or otherwise electronically.

Please click the link below to join the meeting:

<https://tricitymhs-org.zoom.us/j/88343941949?pwd=YURILzIrUIVGQ2ZkVW5LUhA0QWRvZz09>

Passcode: awFL+Wy4

Or Telephone: 1 213 338 8477

Webinar ID: 883 4394 1949

Passcode: 48454489

*Public Participation. Section 54954.3 of the Brown Act provides an opportunity for members of the public to address the Governing Board on any item of interest to the public, before or during the consideration of the item, that is within the subject matter jurisdiction of the Governing Board. Therefore, members of the public are invited to speak on any matter on or off the agenda.*

*The public can make a comment during the meeting by using the 'raised hand' feature, or by calling in, if they wish to address a particular agenda item or to make a general comment on a matter within the subject matter jurisdiction of the Governing Board. The Chair will call on the member of the public at the appropriate time and allow the person to provide live comment. The public can also submit a comment by writing an email to [molmos@tricitymhs.org](mailto:molmos@tricitymhs.org). All email messages received by 3:30 p.m. will be shared with the Governing Board before the meeting. No action shall be taken on any item not appearing on the Agenda. The Chair reserves the right to place limits on duration of comments.*

*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by Tri-City Mental Health Authority to all or a majority of the Tri-City Governing Board less than 72 hours prior to this meeting, are available for public inspection at <http://www.tricitymhs.org>*

**CALL TO ORDER**

Chair Leano calls the meeting to Order.

**ROLL CALL**

Board Member Cockrell, Board Member Lantz, Board Member Nolte, Board Member Ontiveros-Cole, and Board Member Vera; Vice-Chair Carder; and Chair Leano.

**POSTING OF AGENDA**

The Agenda is posted 24 hours prior to this Special Meeting at the following Tri-City locations: Clinical Facility, 2008 N. Garey Avenue in Pomona; Wellness Center, 1403 N. Garey Avenue in Pomona; Royalty Offices, 1900 Royalty Drive #180/280 in Pomona; MHSA Office, 2001 N. Garey Avenue in Pomona; and on the Tri-City’s website: <http://www.tricitymhs.org>

**PUBLIC COMMENT**

The public will be able to make a comment on a specific agenda item by using the ‘raised hand’ feature, or by calling-in. There is no general comment period at a special meeting. The public can also make a comment before the meeting by writing an email to [molmos@tricitymhs.org](mailto:molmos@tricitymhs.org). All emails received by 3:30 p.m. on Wednesday, February 1, 2023 will be shared with the Governing Board before the meeting. No action shall be taken on any item not appearing on the Agenda. The Chair reserves the right to place limits on duration of comments.

**NEW BUSINESS****1. APPROVAL OF TCMHA’S REQUEST FOR QUOTES (RFQ) FOR GENERAL COUNSEL SERVICES**

Recommendation: “A motion to approve the RFQ for General Counsel Services and authorize staff to issue it on February 3, 2023 to invite Attorneys-At-Law and Law Firms to submit a Quote.”

**ADJOURNMENT**

The next Regular Meeting of the Governing Board will be held on **Wednesday, February 15, 2023 at 5:00 p.m.**, via teleconference pursuant to Government Code § 54953.

MICAELA P. OLMOS  
JPA ADMINISTRATOR/CLERK



**Tri-City Mental Health Authority  
AGENDA REPORT**

**DATE:** February 1, 2023  
**TO:** Governing Board of Tri-City Mental Health Authority  
**FROM:** Rimmi Hundal, Executive Director  
**BY:** Mica Olmos, JPA Administrator/Clerk  
**SUBJECT:** Approval of TCMHA's Request For Quotes (RFQ) For General Counsel Services

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Summary:

A Request for Quotes (RFQ) For Counsel Services was drafted, and it being presented for the Governing Board review and approval.

Background:

At its meeting of January 18, 2023, the Governing Board directed staff to commence the recruitment for a new General Counsel after Darold Pieper, current General Counsel, submitted his resignation.

Accordingly, a Request for Quotes (RFQ) was drafted and is being presented to the Board for comment and approval. The draft RFQ includes the proposed timeline for the selection process for a new general counsel.

Fiscal Impact:

There is no fiscal impact associated with issuing the RFQ for Counsel Services.

Recommendation:

It is recommended that the Governing Board review, comment, and approve the Request For Quotes for General Counsel Services; and authorize staff to issue it on February 3, 2023 to invite Attorneys-At-Law and Law Firms to submit a Quote.

Attachments

*Attachment 1-A:* RFQ For General Counsel Services- DRAFT



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Founded in 1960  
by the residents  
of Pomona, Claremont  
and La Verne.

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**REQUEST FOR QUOTES**  
**(NO. 2023-0201)**

**FOR**

**GENERAL COUNSEL SERVICES**  
**(LOCAL GOVERNMENT - COUNTY BEHAVIORAL HEALTH)**

**February 3, 2023**

**Administrative Office**

1717 North Indian Hill  
Boulevard, Suite B  
Claremont, CA 91711  
Phone (909) 623-6131  
Fax (909) 623-4073

**Clinical Office / Adult**

2008 North Garey Avenue  
Pomona, CA 91767  
Phone (909) 623-6131  
Fax (909) 865-9281

**Clinical Office / Children**

900 Royalty Drive  
Pomona, CA 91767  
Phone (909) 784-3200  
Fax (909) 865-0730

**MHSA Office**

2001 North Garey Avenue  
Pomona, CA 91767  
Phone (909) 325-4600  
Fax (909) 326-4690

**Wellness Center**

1403 North Garey Avenue  
Pomona, CA 91767  
Phone (909) 242-7600  
Fax (909) 242-7691

**REQUEST FOR QUOTES  
NO 2023-0201**

**OVERVIEW**

**Contact**

Rimmi Hundal, Executive Director  
Phone: (909) 623-6131  
E-mail: [rhundal@tricitymhs.org](mailto:rhundal@tricitymhs.org)

**Summary of Quote Packet**

- Attachment A* - RFQ Cover Page
- Attachment B* - Proposer's References and Subcontractors
- Attachment C* - Proposer's Work Process Information
- Attachment D* - RFQ Exceptions
- Attachment E* - Proposer Cost
- Due on or before February 17, 2023, 5PM PST:**

- 1) Seven (7) printed copies sealed and delivered via mail, overnight, or in person to:

Tri-City Mental Health Authority  
1717 N. Indian Hill Blvd, Suite B  
Claremont, CA 91711  
Attn: JPA Administrator/Clerk  
"SEALED QUOTE FOR GENERAL COUNSEL LAW SERVICES"

**AND**

- 2) E-mail a scanned Quote Packet (PDF Format), with the RFQ Title as the subject heading to JPA Administrator/Clerk at [molmos@tricitymhs.org](mailto:molmos@tricitymhs.org)
- The RFQ may be downloaded from TCMHA's website at [www.tricitymhs.org](http://www.tricitymhs.org), also the Quote Packet (Attachments A-E) will be available as fillable forms.
  - All Quotes must be signed by a duly authorized representative of the law firm.
  - All unsigned or late Quotes will be rejected.
  - Faxed Quotes are not accepted.
  - Quotes will be verified for compliance with RFQ specifications and also competitively evaluated.
  - A recommendation to award contract tentatively will be presented to the TCMHA Governing Board at its March 15, 2023 meeting.
  - TCMHA reserves the right to make no award of contract.
  - We appreciate your interest in Tri-City Mental Health Authority and look forward to your response.

**REQUEST FOR QUOTES  
NO 2023-0201**

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**REQUEST FOR QUOTES  
NO. 2023-0201**

**I. INTRODUCTION**

Tri-City Mental Health Authority (TCMHA) is requesting written Quotes from qualified law firms and attorneys-at-law (Proposers) with a minimum of ten (10) years of California law, to provide general counsel services for TCMHA beginning March 16, 2023 and ending March 15, 2026, with an option to extend for two additional years. This Request for Quotes (RFQ) is expected to result in a fixed price contract. All Quotes shall meet the provisions, requirements and specifications listed in this Request for Quotes Document No. 2023-0201, and must be received by TCMHA as indicated in the **Quote Requirements**.

**II. TCMHA PROFILE**

**A. Tri-City Mental Health Authority (TCMHA)**

TCMHA was established through a Joint Powers Authority Agreement between the Cities of Pomona, Claremont and La Verne pursuant to the provisions of the Joint Exercise of Powers Act of the State of California, to deliver mental health services to the residents of the three Cities. Pursuant to the Joint Powers Authority Agreement, TCMHA is a public agency governed by a Governing Board (Board) composed of seven members; four members are a council member of their respective City, and three members of the Board are community members appointed by the three Cities. To carry out the Agency operations, the Governing Board develops and establishes resolutions and policies, and appoints an Executive Director to conduct the TCMHA's day-to-day operations.

TCMHA has a stated commitment to achieving excellence and efficiency as a public agency serving the diverse communities of Pomona, Claremont, and La Verne through its five facilities, over 200 employees, and outpatient services. TCMHA creates an integrated system of care to ensure access and to enhance the mental and emotional health of its clients. Available services include psychotherapy, clinical case management, medication support, peer-to-peer support, psychoeducation, linkage and referral, vocational training and support, socialization activities, and community outreach.

**B. The Three Cities: Pomona, Claremont, and La Verne**

The City of Pomona was incorporated as a City in 1888 and became a charter City in 1911. Today, Pomona is the seventh largest city in Los Angeles County, with a population of 154,345, encompasses a land area of 22.95 sq. miles, and is located approximately 27 miles east of downtown Los Angeles in the Pomona Valley between the Inland Empire and the San Gabriel Valley. Pomona is bordered by the cities of La Verne and Claremont on the north; the Los Angeles/San Bernardino county line forms most of the city's southern and eastern boundaries. Pomona boasts a progressive economy, business opportunity, and a strong workforce. Pomona is the site of Pomona Valley Hospital Medical Center and of the Fairplex, which hosts the L.A. County Fair and the NHRA Auto Club Raceway (formerly known as Pomona Raceway). Colleges and universities located in Pomona are California State Polytechnic University (Cal Poly Pomona), Western University of Health Sciences (formerly known as College of Osteopathic Medicine of the Pacific) and DeVry University has a campus in Pomona.

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The City of Claremont was founded in 1887 and incorporated in 1907; it is located approximately 30 miles east of Los Angeles, consisting of 35,000 residents and an area of 14.14 square miles. The City's development has always been closely associated with the academically acclaimed Claremont Colleges consisting of five undergraduate and two graduate higher education institutions. The community takes pride in its rich cultural, educational and architectural heritage, as well as its small-town atmosphere.

The City of La Verne was founded in 1887 and incorporated in 1906; it is situated approximately 35 miles east of Los Angeles nestled in the foothills of the San Gabriel - Pomona Valleys, consisting of a population of over 33,000 and a land area of 8.6 square miles. La Verne is a well-balanced residential community which includes a good mix of commercial and industrial uses as well as the University of La Verne, an airport and fine public and private schools.

### **III. SCOPE OF SERVICE**

#### **A. General Counsel Services**

The selected Proposer will become TCMHA's General Counsel and will be expected to work closely with the Governing Board, the Executive Director, and the JPA Administrator/Clerk. TCMHA prefers to one individual to serve as TCMHA General Counsel, but that attorney or attorney's firm may employ others for specific issues (e.g. litigation). All qualified individuals and firms are encouraged to submit a Quote. The anticipated scope of services will include, but are not limited to, the following:

1. Provide general legal services, routine legal assistance, advice and consultation to the Governing Board, Executive Director, or JPA Administrator/Clerk relating to general public law and regulations, potential tort liability and risk management including, but not limited to the Brown Act, parliamentary procedures for running meetings, Public Records Act, Fair Political Practices Commission (FPPC) requirements, Ethics, Risk Avoidance, public official conflict requirements, laws related to the privacy and security of health information (HIPAA, HITECH Act), Bronzan-McCorquodale Act/Short-Doyle Act, and Lanterman-Petris-Short Act (LPS).
2. Attend all Governing Board Regular Meetings held at 5:00 pm on the third Wednesday of each month, except during the month of August when the Governing Board is dark; and also attend closed sessions, special or urgent meetings as needed.
3. Review and/or prepare Governing Board and Mental Health Commission agendas and reports as needed.
4. Review and/or prepare resolutions, policies and procedures, contracts, agreements, deeds, leases, escrow documents, and all other legal documents as requested by the Governing Board, Executive Director or JPA Administrator/Clerk.
5. Assist with contractual negotiations and/or draft language related to issues raised during negotiations.
6. Advise on individual labor and employment matters.



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7. Promptly respond to calls, e-mails, and correspondence from the Governing Board, Executive Director or JPA Administrator/Clerk.

8. Provide legal counsel to TCMHA staff upon request of the Executive Director or JPA Administrator/Clerk.

9. Alert TCMHA in a timely manner on new State, Federal, or local legislation or judicial decisions that may impact the TCMHA and propose appropriate action(s) to assure compliance.

10. When needed, provide support while working with other government contractual partnerships and/or government oversight agencies, including but not limited to the following:

- California Department of Mental Health (CADMH)
- California Department of Health Care Services (DHCS)
- California Mental Health Services Authority (CalMHSA)
- Los Angeles County Development Authority (LACDA)
- Los Angeles County Department of Public Health (LACDPH)
- Los Angeles County Department of Mental Health (LACDMH)
- Los Angeles Homeless Authority (LAHSA)
- Greater Los Angeles Homeless Management Information System (LAHMIS)
- Southern Counties Regional Partnership (SCRIP)
- Centers for Medicare & Medicaid Services (CMS)
- Mental Health Service Oversight and Accountability Commission (MHSOAC)

11. Review current documents, policies, and forms to ensure compliance to current laws, as requested.

12. Provide legal work pertaining to land use issues including but not limited to property acquisitions and property disposals.

13. Aid in responding to public records requests as needed.

14. Provide training and guidance with regard to the requirements of the Meyers- Milias-Brown Act, Open Meeting Law (Brown Act - Government Code 54550 et seq, Conflict of Interest (AB1234)), the Public Records Act and other legal requirements imposed by statute and common law.

15. Except where conflict of interest rules require otherwise, supervise and coordinate the activities of all other counsel retained by TCMHA or working on behalf of TCMHA.

16. Provide advice and representation regarding insurance coverage matters, including coverage disputes.

17. Represent and defend TCMHA in civil litigation brought on behalf of, or against, TCMHA as directed by the Governing Board or Executive Director.

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**B. Required Experience and Qualifications**

1. The General Counsel shall be licensed to practice in California and must be member in good standing of the State Bar of California.

2. The General Counsel shall have knowledge of, and experience with, California joint powers authorities, local government law and codes, or other public-sector experience; structure and governance of California's Mental Health System; and delivery of public mental health services. The relevant laws and regulations include, but are not limited to:

- a. California Government Code
- b. Joint Exercise of Powers Act
- c. Bronzan-McCorquodale Act/Short-Doyle Act, of the Welfare and Institutions Code (WIC) §5600 et seq.
- d. Lanterman-Petris-Short Act (LPS) –Welfare and Institutions Code (WIC) §5328 et seq.
- e. Ralph M. Brown Act
- f. California Public Contract Code and Labor Code
- g. California Public Records Act
- h. Political Reform Act
- i. California Conflict of Interest Code
- j. Structure and Governance of California's Mental Health System (federal, state, and county roles)
- k. Delivery of Public Mental Health Services (Medi-Cal Specialty Mental Health Services, Children's Specialty Mental Health Services, County-Administered Medi-Cal Mental Health Services, Mental Health Services Act, services for Medicare beneficiaries)
- l. Laws related to the privacy and security of health information (Health Insurance Portability and Accountability Act of 1996, Public Law 104-191)
- m. Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act)
- n. Americans with Disabilities Act

**IV. RFQ SCHEDULE AND TIMELINE**

**A. RFQ Schedule**

1. Request for Quotes (RFQ) Issued: **February 3, 2023**
2. Written Questions Deadline: **February 8, 2023**
3. Response to Written Questions/RFQ Addendum Posted: **February 13, 2023**
4. **Quotes Deadline: February 17, 2023, 5:00 PM PST**
5. Interviews: **March 1, 2023, time TBD**
6. Anticipated Award of Contract: **March 15, 2023**
7. Anticipated Commencement of work: **March 16, 2023**

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**B. Explanation of Timeline**

1. RFQ Issued. The Request for Quotes Packet may be obtained from TCMHA's website at [www.tricitymhs.org](http://www.tricitymhs.org). The TCMHA will not be responsible for the completeness or accuracy of Request for Quote Packets retrieved from any other source than directly from TCMHA.

2. Written Questions Deadline. Submit all written questions by the deadline to RFQ Contact Person. Questions submitted in any other manner or format are not acceptable. All questions must be received via e-mail by 5:00 PM PST February 8, 2023 (see **RFQ Schedule**). Questions will be responded to in writing. Written summaries of all questions and answers will be published on TCMHA's website. Anonymity of the source of specific written questions will be maintained in the written responses. A clarification Addendum will be issued, if necessary.

3. Response to Written Questions/RFQ Addendum Posted. Any material change to the RFQ will be listed on an Addendum to the RFQ and posted at [www.tricitymhs.org](http://www.tricitymhs.org) by February 13, 2023. Additional written questions must be received by the RFQ Contact Person no later than two (2) days after an Addendum is posted. The Agency reserves the right to post additional addenda until the RFQ closing date and time. Any written addendum issued during the Quote time shall become a part of the Request for Quote Packet and shall be signed and attached to the Quote and made a part of the Quote submitted. It is the Proposer's responsibility to indicate acknowledgement, sign, and return Addendums with their response. TCMHA reserves the right to reject any responses deemed to be non-responsive.

4. Quote Deadline. Quotes must be received no later than the deadline specified in RFQ and Quote Timeline.

5. Quote Evaluation Period. Quotes will be reviewed and evaluated, and decide which Proposers will be invited for an interview. During this stage of the evaluation process, TCMHA may also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, solicit information from any available source concerning any aspect of a Proposal, and seek and review any other information deemed pertinent to the evaluation process.

6. Interviews. TCMHA Governing Board will interview the top three Proposer(s). The interviews will be held via Zoom, or on-site at a TCMHA location designated by TCMHA.

7. Anticipated Award of Contract. A formal written notice of intent to award letter will be sent to the selected Proposer; and it will include the anticipated date of the Governing Board meeting when the item will be presented for approval. Selection for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully, TCMHA may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFQ.

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**V. QUOTE REQUIREMENTS**

**A. TCMHA Contact During Quote Process**

During the Quote process, TCMHA contact shall be Rimmi Hundal, Executive Director, (909) 623-6131, e-mail: [rhundal@tricitymhs.org](mailto:rhundal@tricitymhs.org).

**B. Time and Manner of Submission**

1. Seven (7) printed copies of the Quote Packets must be submitted via U.S. Mail, Overnight, or Hand Delivery, and shall be received by TCMHA's Administration Office no later than the Closing Time **5:00 p.m., Pacific Time, on February 17, 2023**. Received Quotes will be time stamped. Quotes submitted via Hand Delivery, may be delivered Monday – Thursday, between the hours of 8:00 AM and 5:00 PM (PST); and on Fridays, between the hours of 8:00 AM and 3:00 PM (PST); excluding TCMHA holidays. Quotes delivered after the Closing Time will not be accepted. Quotes must be in a sealed envelope, and addressed as follows:

Tri-City Mental Health Authority  
1717 N. Indian Hill Blvd, Suite B  
Claremont, CA 91711  
Attn: JPA Administrator/Clerk  
"SEALED QUOTE FOR GENERAL COUNSEL SERVICES"

2. A fully executed Quote shall be scanned and emailed to [molmos@tricitymhs.org](mailto:molmos@tricitymhs.org) no later than **5:00 p.m. (PST), on February 17, 2023**.

**C. Quote Format**

It is TCMHA's request that the Quotes be brief and succinct. Information listed 1-5 below (Appendices A-E) to this Quote Packet are required to be included in the submitted Quote. If all appendices are not included, the submitted Quote will be considered incomplete; and thus, non-responsive. The Quote shall be submitted in the following format:

1. RFQ Cover Page – (*Attachment A*) The cover page shall must list the Proposer (owner or person in charge); be signed by the authorized Proposer representative; and it should also include a summary statement regarding the following:

a. An affirmative statement that you/your firm is independent of TCMHA and that the services to be performed will be in the capacity of independent contractor and not as an officer, agent, or employee of TCMHA.

b. Proposer's interest in the services, the understanding of the work to be done, and the commitment to perform the work.

c. A concise statement of qualifications and experience applicable to each type of service that is to be provided.

d. Stipulate the Quote is irrevocable for 90 days from the closing date.

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e. Indicate features, skills and/or services that distinguish you/your firm and make you/it the better choice for TCMHA.

f. Provide an organization chart showing all proposed team members. Describe the responsibilities of each person on the team. Identify the person who will serve as General Counsel and the person who will be the key contact with TCMHA. Indicate the availability of the members of the project team for the duration of the services. Include resumes for each member of the team.

**2. Proposer's References and Subcontractors (*Attachment B*)** Provide at least five (5) recent governmental client references, with contact information, for whom similar or comparable services have been performed. Include the client name, mailing address, location, telephone number, and email addresses, type of work, and other relevant information to allow detailed reference checks. Proposers are responsible for notifying references that TCMHA may be contacting them and for providing any waivers or releases the reference requires prior to submitting a Quote.

**3. Proposer's Work Process Information (*Attachment C*)**. Typically, the General Counsel does not have an office on TCMHA sites. Describe the tasks you plan to carry out in accomplishing the scope of work, deliverables, and responsibilities including:

a. Your/your firm's approach and methods for managing the requested services.

b. Describe how you would structure the working relationship between the General Counsel and TCMHA Governing Board, Executive Director, Department Heads, and other members of staff.

c. Describe your/your firm's suggested process for transmittal of requests and other material to the General Counsel.

d. Describe the response time we can expect from the General Counsel to inquiries made by the Governing Board, Executive Director, or JPA Administrator/Clerk. Include systems/mechanisms that will be established to ensure timely responses.

e. Describe the types of in-service training (such as ethics and AB 1234, commission roles and responsibilities, public records act, etc.) you/your firm are/is capable of providing.

f. Please submit an example of a typical invoice you/your firm provides to a public agency. Please redact any references to specific costs. Also, redact any sensitive information. We are interested in the format, type of information included, and readability.

g. Provide written samples of a resolution, staff report, and litigation memorandum to Governing Board. Provide information on a particularly unique or controversial issue that the firm or individual addressed and how the issue was resolved.

**4. RFQ Exceptions (*Attachment D*)**. Provide properly completed Exception(s) To Specifications and/or Sample Contractor Agreement (*Attachment F*). If Proposer has no exceptions, then Proposer must check the box, where indicated.

**REQUEST FOR QUOTES  
NO. 2023-0201**

5. Proposer Cost (*Attachment E*). The Cost should consider the Scope of Services as set forth in Section III of this RFQ. Please state the dollar amount of hourly fees and costs you/your firm will charge for providing legal services to TCMHA, and identify the hourly rate of each attorney and support personnel. Also indicate the minimum increment of time billed for each service, e.g. phone calls, meetings (in-person or electronically), correspondence, personal conferences, etc. Also state separately the rate(s) for any other cost items proposed to be itemized and billed (i.e. photocopying, Westlaw, or Lexis fees, overhead factor, etc.); please be specific. If there are any services routinely performed at no cost, list those services. The Cost should also include a separate cost for each of the three years of the contract. Cost will not be the deciding factor in making the selection. The overall total cost to TCMHA will be considered and the degree of the importance of cost will increase with the degree of equality of the Quotes in relation to the other factors on which selection is to be based.

**VI. AWARD AND AGREEMENT EXECUTION**

**A. Quote Opening**

There will be no public opening of submittal Quotes. After the evaluation process is concluded and a proposed intent to award determination is made, a written notification of the proposed award will be provided to all Proposers.

**B. Quote Evaluation**

The Quote should give clear, concise information in sufficient detail to allow an evaluation. The Quotes will be reviewed and evaluated based on the following criteria:

1. Proposer's qualifications, description and experience
2. Understanding, ability, and availability to perform the Scope of Work
3. Client references with similar law services
4. Interview
5. Cost

**C. Quote Rejection**

TCMHA reserves the right to reject any and all Quotes, either in part or in its entirety; or to negotiate specific terms, conditions, compensation, and provisions on any agreements that may arise from this solicitation; to waive any informalities or irregularities in the Quotes; to request and obtain, from one or more of the agencies submitting Quotes, supplementary information as may be necessary for TCMHA to analyze the Quotes; and to accept the Quote that appear to be in the best interest of TCMHA. In determining and evaluating the Quotes, costs will not necessarily be controlling; the experience of those who will be providing services under the agreement, quality, equality, efficiency, utility, suitability of the services offered, and the reputation of Proposers will be considered, along with other relevant factors.

**REQUEST FOR QUOTES  
NO. 2023-0201**

**D. Subcontracting**

If subcontracting is contemplated, this should be discussed in your Quote. No subcontracting will be allowed without the express prior written consent of TCMHA.

**E. Withdrawal or Modification of Quotes**

Quotes may be modified or withdrawn only by a written request received by TCMHA prior to the Request for Quotes due date (Closing Date).

**F. Agreement Period**

The initial agreement period shall be for three (3) years beginning on Commencement date. TCMHA can at its choice, exercise offers for two additional annual extensions for a total possible agreement period of five (5) years, subject to the annual review and recommendation of the Executive Director, the satisfactory negotiation of terms (including a price acceptable to both TCMHA and the selected Contractor), the concurrence of the Governing Board, and the annual availability of a budget appropriation. No price increases shall be accepted during the initial agreement period.

**G. Award of a Contract**

A contract may be awarded to the successful Proposer for the Scope of Services by TCMHA Governing Board, as applicable, based upon the criteria reflected in this RFQ. TCMHA reserves the right to execute, or not execute, an Agreement with the successful Proposer when it is determined to be in TCMHA's best interests. This RFQ does not commit TCMHA to award a contract; and no Quote or Agreement shall be considered binding upon TCMHA until the execution of the Agreement by TCMHA and all conditions of the Agreement and/or RFQ have been met. A copy of the Business License will be required after the award of contract.

**H. Execution of Agreement**

By submitting a Quote (Response), the Proposers agree to be bound to and execute an Independent Contractor Agreement (*Attachment F*) for the services described in this RFQ, modified as may be required to apply to legal services. Without diminishing the foregoing, the Proposer may request clarification and submit comments concerning the Agreement for TCMHA's consideration. None of the foregoing shall preclude TCMHA, at its option, from seeking to negotiate changes to the Contract prior to its execution. TCMHA may cancel all or any portion of the Agreement for any reason with thirty (30) days written notice to Contractor.

The Agreement shall be signed prior to the commencement of any work by the successful Proposer and returned, together, with the required insurance forms within fourteen (14) calendar days after the Proposer has received written notice of award. Failure to do so shall be just cause for the annulment of the award at the sole election of TCMHA.

**REQUEST FOR QUOTES  
NO. 2023-0201**

**I. Indemnity and Insurance Requirements**

The awarded Proposer shall comply with the indemnity and insurance requirements set in the Independent Contractor Agreement (*Attachment F*). If selected, Proposer shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. In addition, Contractor shall require and verify all subcontractors maintain insurance subject to all of the requirements stated therein.

**VII. GENERAL PROVISIONS**

**A. Independent Contractor**

In performance of the work, duties and obligations assumed by the Proposer, it is mutually understood and agreed that the Proposer, including any and all of the Proposer's officers, agents and employees, will at all times be acting and performing in an independent capacity and not as an officer, agent, employee, joint venture, partner or associate of TCMHA.

**B. Public Records - Notice Related to Proprietary/Confidential Data**

Proposers are advised that the California Public Records Act (the "Act", Government Code §§6250 et seq.) provides that any person may inspect or be provided a copy of any identifiable public record or document that is not exempted from disclosure by the express provisions of the Act. Each Proposer shall clearly identify any information within its submission that it intends to ask TCMHA to withhold as exempt under the Act. Any information contained in a Proposer's submission which the Proposer believes qualifies for exemption from public disclosure as "proprietary" or "confidential" must be identified as such at the time of first submission of the Proposer's response to this RFQ.

Failure to identify information contained in a Proposer's submission to this RFQ as "proprietary" or "confidential" shall constitute a waiver of Proposer's right to object to the release of such information upon request under the Act. TCMHA favors full and open disclosure of all such records. TCMHA will not expend public funds defending claims for access to, inspection of, or to be provided copies of any such records.

Note that wholesale use of headers/footers bearing designations such as "confidential", "proprietary", or "trade secret" on all or nearly all of a Quote is not acceptable, and may be deemed by TCMHA as a waiver of any exemption claim. Any Quote that includes a blanket statement or limitation, which would prohibit or limit public inspection may be considered non-responsive and may be rejected. Pricing information is generally not considered proprietary information. The identification of exempt information must be specific. TCMHA assumes no responsibility for disclosure or use of unmarked data for any purposes.



**REQUEST FOR QUOTES  
NO. 2023-0201**

**C. Conflict Of Interest**

Proposers, by responding to this RFQ, certify that to the best of their knowledge or belief, no elected/appointed official or employee of the TCMHA is financially interested, directly or indirectly, in the purchase of goods/services specified in this RFQ. Furthermore, Proposer represents and warrants to TCMHA that it has not employed or retained any person employed, or contracted agency, by TCMHA to solicit or secure the award of the Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of the Agreement.

**D. Nondiscrimination**

Proposer agrees that it shall not discriminate as to race, sex, color, age, religion, national origin, marital status, sexual identity or disability in connection with its performance under this RFQ. Furthermore, Proposer agrees that no otherwise qualified individual shall solely by reason of the aforementioned be excluded from the participation in, be denied benefits of, or be subjected to, discrimination under any program or activity.

**E. Debarred/Suspended Contractors**

The awarded Proposer shall certify that no staff member, officer, director, partner, principal, or owner, or sub-contractor is excluded from any Federal health care program, or federally funded contract, as required in the Independent Contractor Agreement (*Attachment F*).

**F. Governing Law and Regulations**

The services will be performed in, construed by and interpreted according to the laws of the State of California. Proposer will comply with all federal, state, and local laws, standards, regulations, licenses, and permits. No Quote received and read may be withdrawn for a period of ninety (90) calendar days after the date fixed for opening Quotes, although TCMHA intends to award the Agreement within thirty (30) calendar days of receiving the Quotes. TCMHA reserves the right to retain all Quotes submitted and to use any ideas in a Quote regardless of whether that Quote is selected. Submission of a Quote indicates acceptance by the Proposer of the conditions contained in this request for Quotes, unless clearly and specifically noted in the Quote submitted and confirmed in the agreement between TCMHA and the attorney-at-law or law firm selected.

There is no expressed or implied obligation for TCMHA to reimburse responding Proposers for any expenses incurred in preparing Quotes in response to this request or for developing and carrying out interview presentations. Any Quote preparation and/or travel cost in regards to this Quote is the sole responsibility of the Proposer. All Quote documents, prints and any detailed drawings shall be the property of TCMHA once submitted. TCMHA is a Joint Powers Authority formed and existing under the laws of the State of California. The successful Proposer will be required to satisfy all current legal requirements applicable to this work including Labor Code section 1061(b)(1), if applicable. The Proposer, by submitting a response to this RFQ, waives all right to protest or seek any legal remedies whatsoever regarding an aspect of this RFQ. Although, it is TCMHA's

**REQUEST FOR QUOTES  
NO. 2023-0201**

intent to choose only a small number of the most qualified law firms and/or attorneys-at-law to interview with TCMHA, TCMHA reserves the right to choose any number of qualified finalists.

**VIII. DEFINITIONS**

**A. Tri-City Mental Health Services Authority:** Tri-City Mental Health Authority (TCMHA) or its authorized representative.

**B. Request for Quote Documents:** The document soliciting invitation for Quote and includes basic Quote information and contractual documents.

**C. Proposer:** a person, firm, corporation, partnership, or other entity who submits a Quote.

**D. Quote Packet:** All requested and required Request for Quote Documents and forms submitted by the Proposer to TCMHA.

**E. Closing Time:** The time and date deadline for submission of Quote.

**F. Independent Contractor:** Upon TCMHA's award of the agreement a successful Proposer will become known as "Independent Contractor".

**IX. ATTACHMENTS**

Attachment A: RFQ Cover Page

Attachment B: Proposer's References and Subcontractors

Attachment C: Proposer's Work Process Information

Attachment D: RFQ Exceptions

Attachment E: Proposer's Cost

Attachment F: Sample Independent Contractor Agreement

**RFQ NO. 2023-0201**

**ATTACHMENT A**

**RFQ COVER PAGE**

<b>Name of Attorney-At-Law or Law Firm:</b>	
<b>Type of Entity:</b> (e.g. Sole-Proprietorship, Partnership, Corporation)	
<b>Federal Tax ID Number:</b>	
<b>Contact Person – Name</b>	
<b>Contact Person – Address</b>	
<b>Contact Person – Phone Number (s)</b>	
<b>Contact Person – e-mail address</b>	

By signing this ***RFQ Cover Page*** I hereby attest:

1. that I have read and understood all the terms listed in the RFQ;
2. that I am authorized to bind the listed entity into this agreement;
3. that neither I nor any principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local government agency;
4. that should this Quote be accepted, I am authorized and able to secure the resources required to deliver against all terms listed within the RFQ as published by TCMHA, including any amendments or addenda thereto except as explicitly noted or revised in my submitted Quote;
5. that I did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal: and
6. that the information contained in the Quote Packet and all accompanying documents is true and correct.

**PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE**

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**SIGNATURE OF AUTHORIZED REPRESENTATIVE**

**DATE**

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**Please attach any documents related to you/your firm’s summary statement as required under Section V.C.1 of this RFQ document.**

**RFQ NO. 2023-0201**

**ATTACHMENT B**

**PROPOSER’S REFERENCES AND SUBCONTRACTORS**

Attorney-At-Law or Law Firm Name:	Address:
Owner, Principal Officer:	Headquarters Location/Date of Establishment:
Email:	Website:
Phone:	Fax:

Have you ever operated this business under a different name? Yes \_\_\_\_\_ No \_\_\_\_\_

Have you ever provided legal services under a different law firm? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please explain:

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**On Going Legal Proceedings:** Provide details on any litigation in which you/your firm have been the subject of a lawsuit in the past five (5) years. If none, then write “NONE.”

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Has the Proposer, any officer of the Proposer, or any employee of the Proposer who has proprietary interest in the Proposer, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space:

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[Continued on Page 2]

**List five (5) references** that you/your law firm is currently *working on or has completed* in the last 5 years of similar size and scope of work for this Quote:

1. Agency Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Contact e-mail: \_\_\_\_\_ Contact Phone: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Agreement Amount: \_\_\_\_\_ Agreement Start/End Date: \_\_\_\_\_

2. Agency Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Contact e-mail: \_\_\_\_\_ Contact Phone: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Agreement Amount: \_\_\_\_\_ Agreement Start/End Date: \_\_\_\_\_

3. Agency Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Contact e-mail: \_\_\_\_\_ Contact Phone: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Agreement Amount: \_\_\_\_\_ Agreement Start/End Date: \_\_\_\_\_

4. Agency Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Contact e-mail: \_\_\_\_\_ Contact Phone: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Agreement Amount: \_\_\_\_\_ Agreement Start/End Date: \_\_\_\_\_

5. Agency Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Contact e-mail: \_\_\_\_\_ Contact Phone: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Agreement Amount: \_\_\_\_\_ Agreement Start/End Date: \_\_\_\_\_

**Subcontractors** to be utilized, if applicable:

1. Agency Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Contact e-mail: \_\_\_\_\_ Contact Phone: \_\_\_\_\_  
Specialty: \_\_\_\_\_ Years in Business: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_

**RFQ NO. 2023-0201**

**ATTACHMENT C**

**PROPOSER'S WORK PROCESS INFORMATION**

Describe the tasks you plan to carry out in accomplishing the scope of work, deliverables, and responsibilities including:

1. Your/your firm's approach and methods for managing the requested services.

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2. Describe how you would structure the working relationship between the General Counsel and TCMHA Governing Board, Executive Director, Department Heads, and other members of staff.

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3. Describe your/your firm's suggested process for transmittal of requests and other material to the General Counsel.

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[Continued on Page 2]

- 4. Describe the response time we can expect from the General Counsel to inquiries made by the Governing Board, Executive Director, or JPA Administrator/Clerk. Include systems/mechanisms that will be established to ensure timely responses.

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- 5. Describe the types of in-service training (such as ethics and AB 1234, commission roles and responsibilities, public records act, etc.) you/your firm are/is capable of providing.

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- 6. Please submit an example of a typical invoice you/your firm provides to a public agency. Please redact any references to specific costs. Also, redact any sensitive information. We are interested in the format, type of information included, and readability.

- 7. Provide written samples of a resolution, staff report, and litigation memorandum to the Governing Board. Provide information on a particularly unique or controversial issue that the firm or individual addressed and how the issue was resolved.

**Please attach any information or documents related to you/your firm's work process information as required under Section V.C.3 of this RFQ document.**





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**ATTACHMENT E**

**PROPOSER'S COST**

To ensure consistency and for proper analysis, cost/pricing submission should follow the format reflected. The Cost should consider the Scope of Services as set forth in Section III of this RFQ. The Cost should be should be provided as required under Section V.C.5 of this RFQ

YEAR ONE (Commencement Date through June 30, 2024)

**Option A:** Hourly fees for all work (no retainer)

HOURLY FEE – NO RETAINER			
Hourly Fee	Services	Attorney & Personnel	Minimum Increment
\$			
\$			
\$			
\$			
\$			
\$			
\$			
OTHER COSTS (Photocopying, overhead factor, etc.)			
Fee	Item	Services at No Cost	
\$			
\$			
\$			
\$			

**Option B:** Proposer’s choice. Explain any billing methodology you would like TCMHA to consider. Utilize space below or include an additional attachment to expand.

PROPOSER'S CHOICE

[Continued on Page 2]

YEAR TWO (July 1, 2024 through June 30, 2025)

**Option A:** Hourly fees for all work (no retainer)

HOURLY FEE – NO RETAINER			
Hourly Fee	Services	Attorney & Personnel	Minimum Increment
\$			
\$			
\$			
\$			
\$			
\$			
\$			
OTHER COSTS (Photocopying, overhead factor, etc.)			
Fee	Item	Services at No Cost	
\$			
\$			
\$			
\$			

**Option B:** Proposer’s choice. Explain any billing methodology you would like TCMHA to consider. Utilize space below or include an additional attachment to expand.

PROPOSER’S CHOICE

[Continued on Page 3]

YEAR THREE (July 1, 2025 through June 30, 2026)

**Option A:** Hourly fees for all work (no retainer)

HOURLY FEE – NO RETAINER			
Hourly Fee	Services	Attorney & Personnel	Minimum Increment
\$			
\$			
\$			
\$			
\$			
\$			
\$			
OTHER COSTS (Photocopying, overhead factor, etc.)			
Fee	Item	Services at No Cost	
\$			
\$			
\$			
\$			

**Option B:** Proposer’s choice. Explain any billing methodology you would like TCMHA to consider. Utilize space below or include an additional attachment to expand.

PROPOSER’S CHOICE

**RFQ NO. 2023-0201**

**ATTACHMENT F**

**SAMPLE**



**INDEPENDENT CONTRACTOR AGREEMENT**

**BETWEEN THE**

**TRI-CITY MENTAL HEALTH AUTHORITY**

**AND**

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**DATED**

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## AGREEMENT

### 1. PARTIES AND DATE

THIS AGREEMENT (hereinafter "Contract" or "Agreement") is made and entered into on the \_\_\_\_\_ by and between the TRI-CITY MENTAL HEALTH AUTHORITY, a joint powers agency organized under the laws of the State of California with its administrative office at 1717 N. Indian Hill Boulevard, #B, Claremont, California 91711 (hereinafter "TCMHA" or "Authority") and \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (hereinafter "Contractor"). TCMHA and Contractor are sometimes individually referred to as a "Party" and collectively as "Parties."

### 2. CONTRACTOR

The express intention of the parties is that Contractor is an independent contractor and not an employee, agent, joint venture or partner of TCMHA. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employee and employer between Contractor and TCMHA or any employee or agent of Contractor. At all times Contractor shall be an independent contractor and Contractor shall have no power to incur any debt, obligation, or liability on behalf of TCMHA without the express written consent of TCMHA. Neither TCMHA nor any of his agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. In executing this Agreement, Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of TCMHA.

### 3. SCOPE OF SERVICES

Contractor shall provide the specified services and/or materials as set forth in 'Exhibit A' of this Agreement and the Contractor's Quote for General Counsel Services incorporated into and made a part of this Agreement as 'Exhibit B.'

### 4. PERFORMANCE OF SERVICES

Contractor reserves the sole right to control or direct the manner in which services are to be performed. Contractor shall retain the right to perform services for other entities during the term of this Agreement, so long as they are not competitive with the services to be performed under this Agreement. Contractor shall neither solicit remuneration nor accept any fees or commissions from any third party in connection with the Services provided to TCMHA under this Agreement without the expressed written permission of TCMHA. Contractor warrants that it is not a party to any other existing agreement which would prevent Contractor from entering into this Agreement or which would adversely affect Contractor's ability to fully and faithfully, without any conflict of interest, perform the Services under this Agreement.

## 5. SUBCONTRACTORS

Neither party hereto may assign this Agreement, nor will Contractor subcontract any service requested hereunder to contractor(s) unless consented to in writing by the Executive Director of TCMHA or Designee. After approval from TCMHA, any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

## 6. TIME AND LOCATION OF WORK

Contractor shall perform the services required by this Agreement at any place or location and at any time as Contractor deems necessary and appropriate, so long as the services are provided within the manner and time frames mutually agreed, and within the manner outlined under 'Exhibit A' and 'Exhibit B.'

## 7. TERMS

a. Effective Date. The services and/or materials furnished under this Agreement shall commence \_\_\_\_\_, 2023 and shall be and remain in full force and effect until amended or terminated at the end of Year- Three on \_\_\_\_\_, 2026, with an option to extend for two additional years through \_\_\_\_\_, 2028; unless terminated in accordance with the provisions of Section 8 below.

b. Agreement Extension. TCMHA at its sole discretion, upon two months prior notice to the Contractor, extend the Agreement for two successive 12-month periods. Such extensions shall be under the same terms and conditions or as negotiated and revised in writing. At such time as TCMHA chooses to exercise the option to extend the Agreement, the Contractor will be notified and requested to submit a written proposal detailing the next 12-months offered price for the agreement services. If the option for any 12-month period extension is not exercised, the agreement shall terminate at the end of the current period term. Any extensions shall be subject to agreement between TCMHA and the Contractor and will be subject to the approval by TCMHA's Governing Board by a resolution adopted at a noticed public meeting of the Governing Board.

c. Agreement Price Adjustment Parameters. To be eligible for an Agreement Extension, the price shall either remain the same as proposed or, upon mutual agreement, can be adjusted by the 12-Month percentage change in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco, Oakland, San Jose, California index published by the Department of Labor for the most current yearly comparison three months prior to the Agreement expiration dates. For example, if the Agreement expires in February the CPI comparison would be between the November CPI for that year and the preceding year. Despite any changes in the CPI for any given twelve-month adjustment period, upward adjustment of Agreement amount shall not exceed 5 percent during any single twelve-month adjustment period.

**8. COMPENSATION.** For the full performance of this Agreement:

**a.** TCMHA shall pay Contractor for time spent in providing the services, including reasonable travel time and for necessary costs and expenses incurred by Contractor on behalf of TCMHA, an amount not to exceed as stated in the Contractor's Quote, incorporated herein as 'Exhibit B', within thirty (30) days following receipt of invoice and completion/delivery of services/goods as detailed in Sections 3 of this Agreement and only upon satisfactory delivery/completion of goods/services, in a manner consistent with professional/industry standards for the area in which Contractor operates. TCMHA is not responsible for paying for any work done by Contractor or any subcontractor above and beyond the 'not to exceed' amount for the specified legal services and/or materials as set forth in 'Exhibit B.'

**b.** Contractor is responsible for monitoring its own forces/employees/agents/subcontractors to ensure delivery of goods/services within the terms of this Agreement. TCMHA will not accept or compensate Contractor for incomplete goods/services.

**c.** Contractor acknowledges and agrees that, as an independent contractor, the Contractor will be responsible for paying all required state and federal income taxes, social security contributions, and other mandatory taxes and contributions. TCMHA shall neither withhold any amounts from the Compensation for such taxes, nor pay such taxes on Contractor's behalf, nor reimburse for any of Contractor's costs or expenses to deliver any services/goods including, without limitation, all fees, fines, licenses, bonds, or taxes required of or imposed upon Contractor. TCMHA shall not be responsible for any interest or late charges on any payments from TCMHA to Contractor.

**9. TERMINATION.** This Agreement may be terminated only as follows:

**a.** Written Notice. Either Party may terminate this Agreement at any time, without cause, upon ninety days (90) calendar days' prior written notice to the other Party. Contractor agrees to cooperate fully in any such transition, including the transfer of records and/or work performed. TCMHA will reimburse Contractor for its satisfactorily-completed services up to the date specified in the notice of termination and for demobilization costs reasonably incurred by Contractor after that date.

**b.** Effect of Termination. No termination of this Agreement shall affect or impair Contractor's right to receive compensation earned for work satisfactorily completed through the effective date of termination. In the event of termination, Contractor shall immediately deliver all written work product to TCMHA, which work product shall be consistent with all progress payments made to the date of termination.

**10. LICENSES.**

Contractor declares that Contractor has complied with all federal, state, and local business permits and licensing requirements necessary to conduct business; and shall present a copy of the Business License after execution of this Agreement.



## 11. PROPRIETARY INFORMATION.

The Contractor agrees that all information, whether or not in writing, of a private, secret or confidential nature concerning TCMHA's business, business relationships or financial affairs (collectively, "Proprietary Information") is and shall be the exclusive property of TCMHA. The Contractor will not disclose any Proprietary Information to any person or entity, other than persons who have a need to know about such information in order for Contractor to render services to TCMHA and employees of TCMHA, without written approval by Executive Director of TCMHA, either during or after its engagement with TCMHA, unless and until such Proprietary Information has become public knowledge without fault by the Contractor. Contractor shall also be bound by all the requirements of HIPAA.

## 12. RECORDS AND AUDITS

The Contractor shall maintain accounts and records, including all working papers, personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by TCMHA to assure proper accounting for all project funds, both Federal and non-Federal shares. These records must be made available for audit purposes to TCMHA or any authorized representative, and must be retained, at the Contractor's expense, for a minimum of seven (7) years, unless Contractor is notified in writing by TCMHA of the need to extend the retention period.

## 13. GENERAL TERMS AND CONDITIONS

**a. Indemnity.** Contractor agrees to indemnify, defend and hold harmless TCMHA, its officers, agents and employees from any and all demands, claims or liability of personal injury (including death) and property damage of any nature, caused by or arising out of the performance of Contractor under this Agreement. With regard to Contractor's work product, Contractor agrees to indemnify, defend and hold harmless TCMHA, its officers, agents and employees from any and all demands, claims or liability of any nature to the extent caused by the negligent performance of Contractor under this Agreement.

**b. Insurance.** Contractor shall obtain and file with TCMHA, at its expense, a certificate of insurance before commencing any services under this Agreement as follows:

**i. Workers Compensation Insurance:** Minimum statutory limits.

**ii. Automobile Insurance:** \$1,000,000.00 per occurrence.

**iii. Errors And Omissions Insurance:** \$2,000,000 per occurrence and \$4,000,000 annual aggregate.

**iv. Commercial General Liability And Property Damage Insurance:** General Liability and Property Damage Combined. \$2,000,000.00 per occurrence including comprehensive form, personal injury, broad form personal damage, contractual and premises/operation, all on an occurrence basis. If an aggregate limit exists, it shall apply separately or be no less than two (2) times the occurrence limit.

**v. Cyberliability Insurance.** Consultant shall maintain cyberliability insurance in the amount of \$5,000,000.00 per occurrence providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of

TCMHA Data; (ii) data breach including theft, destruction, and/or unauthorized use of TCMHA Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of TCMHA Data.

**vi. Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against TCMHA, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against TCMHA and shall require similar written express waivers and insurance clauses from each of its subcontractor.

**vii. Notice Of Cancellation:** The TCMHA requires 30 days written notice of cancellation. Additionally, the notice statement on the certificate should not include the wording "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the Agency, its agents or representatives."

**viii. Certificate Of Insurance:** Prior to commencement of services, evidence of insurance coverage must be shown by a properly executed certificate of insurance by an insurer licensed to do business in California, satisfactory to TCMHA, and it shall name "Tri-City Mental Health Authority, its elective and appointed officers, employees, volunteers, and contractors who serve as TCMHA officers, officials, or staff" as additional insureds. All coverage for subcontractors shall be subject to all of the requirements stated herein. All subcontractors shall be protected against risk of loss by maintaining insurance in the categories and the limits required herein. Subcontractors shall name TCMHA and Contractor as additional insured.

**ix.** To prevent delay and ensure compliance with this Agreement, the insurance certificates and endorsements must be submitted to:

Tri-City Mental Health Authority  
1717 N. Indian Hill Boulevard, #B  
Claremont, CA 91711-2788  
Attn: JPA Administrator/Clerk

**c. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental disability, medical condition, sexual orientation or gender identity. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, sexual orientation or gender identity.

**d. Changes to the Agreement.** This Agreement shall not be assigned or transferred without advance written consent of TCMHA. No changes or variations of any kind are authorized without the written consent of the Executive Director. This Agreement may only be amended by a written instrument signed by both Parties. The Contractor agrees that any written change or changes in compensation after the signing of this Agreement shall not affect the validity or scope of this Agreement and shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services.

e. Records. All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that are prepared or obtained pursuant to this Agreement and that relate to the matters covered hereunder shall be and remain the property of TCMHA. Contractor will be responsible for and maintain such records during the term of this Agreement. Contractor hereby agrees to deliver those documents to TCMHA at any time upon demand of TCMHA. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for TCMHA and are not necessarily suitable for any future or other use. Failure by Contractor to deliver these documents to TCMHA within a reasonable time period or as specified by TCMHA shall be a material breach of this Agreement. TCMHA and Contractor agree that until final approval by TCMHA, all data, reports and other documents are preliminary drafts not kept by TCMHA in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work products submitted to TCMHA pursuant to this Agreement shall be deemed a "work for hire." Upon submission of any work for hire pursuant to this Agreement, and acceptance by TCMHA as complete, non-exclusive title to copyright of said work for hire shall transfer to TCMHA. The compensation recited in Section 8 shall be deemed to be sufficient consideration for said transfer of copyright. Contractor retains the right to use any project records, documents and materials for marketing of their professional services.

f. Business Associate Agreement. To the extent necessary, TCMHA will furnish Protected Health Information (PHI) to Contractor (Business Associate) in accordance with all applicable legal requirements to allow Contractor to perform Legal Consulting services on TCMHA's behalf. Contractor is required to appropriately safeguard the PHI disclosed to it. In accordance with TCMHA's policies and procedures, Contractor will sign a *Business Associate Agreement*, incorporated herein as 'Exhibit C', accepting liability for any breach of ePHI or PHI.

g. Contractor's Attestation. Also in accordance with TCMHA's policies and procedures, TCMHA will not enter into contracts with individuals, or entities, or owners, officers, partners, directors, or other principals of entities, who have been convicted recently of a criminal offense related to health care or who are debarred, excluded or otherwise precluded from providing goods or services under Federal health care programs, or who are debarred, suspended, ineligible, or voluntarily suspended from securing Federally funded contracts. TCMHA requires that Contractor certifies that no owner, staff member, officer, director, partner, or principal, or sub-contractor is excluded from any Federal health care program, or federally funded contract and will sign attached *Contractor's Attestation That Neither It Nor Any Of Its Staff Members Are Restricted, Excluded Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program*, incorporated herein as 'Exhibit D'.

h. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California.

**14. REPRESENTATIVE AND NOTICE**

**a. TCMHA’s Representative.** TCMHA hereby designates its Executive Director to act as its representative for the performance of this Agreement (“TCMHA’s Representative”). TCMHA’s Representative shall have the power to act on behalf of TCMHA for all purposes under this Agreement.

**b. Contractor’s Representative.** Contractor warrants that the individual who has signed the Agreement has the legal power, right, and authority to make this Agreement and to act on behalf of Contractor for all purposes under this Agreement.

**c. Delivery of Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

<p><u>If to TCMHA:</u>                  Tri-City Mental Health Authority                  1717 N. Indian Hill Boulevard #B                  Claremont, CA 91711-2788                  Attn: Executive Director</p>	<p><u>If to Contractor:</u>                  Name                  Address                  City                  Attn:</p>
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Any notices required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving Party’s regular business hours or by facsimile before or during receiving Party’s regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provision of this Section. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**15. EXHIBITS**

The following attached exhibits are hereby incorporated into and made a part of this Agreement:

- Exhibit A: Scope of Services
- Exhibit B: Quote from Contractor dated \_\_\_\_\_
- Exhibit B: Business Associate Agreement
- Exhibit C: Contractor’s Attestation That Neither It Nor Any Of Its Staff Members Are Restricted, Excluded Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program

**16. ENTIRE AGREEMENT**

This Agreement shall become effective upon its approval and execution by TCMHA. This Agreement and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between the Parties. Any ambiguities or disputed terms between this Agreement and any attached Exhibits shall be interpreted according to the language in this Agreement and not the Exhibits. This Agreement supersedes all prior agreements, written or oral,

between the Contractor and TCMHA relating to the subject matter of this Agreement. This Agreement may not be modified, changed or discharged in whole or in part, except by an agreement in writing signed by the Contractor and TCMHA. The validity or unenforceability of any provision of this Agreement declared by a valid judgment or decree of a court of competent jurisdiction, shall not affect the validity or enforceability of any other provision of this Agreement. No delay or omission by TCMHA in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by TCMHA on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion or a waiver of any other condition of performance under this Agreement.

**17. EXECUTION.**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Agreement Date.

**TRI-CITY MENTAL HEALTH AUTHORITY** \_\_\_\_\_, **Contractor**

By: \_\_\_\_\_  
Rimmi Hundal, Executive Director

By: \_\_\_\_\_  
\_\_\_\_\_, President/Owner

Attest:

By: \_\_\_\_\_  
Micaela P. Olmos, JPA Administrator/Clerk

Approved as to Form and Content:  
DAROLD D. PIEPER, ATTORNEY AT LAW

By: \_\_\_\_\_  
Darold D. Pieper, General Counsel

**EXHIBIT A**  
**SCOPE OF SERVICE**

**EXHIBIT B**

**CONTRACTOR'S QUOTE**

## EXHIBIT C

### **BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT (“BAA”) is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between TRI-CITY MENTAL HEALTH AUTHORITY, a Covered Entity (“**Covered Entity**” or “**CE**”) and \_\_\_\_\_ (“**Business Associate**” or “**BA**”) (each a “**party**” and, collectively, the “**parties**”).

### RECITALS

A. CE is a “covered entity” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and, as such, must enter into so-called “business associate” contracts with certain contractors that may have access to certain consumer medical information.

B. Pursuant to the terms of one or more agreements between the parties, whether oral or in writing, (collectively, the “**Agreement**”), BA shall provide certain services to CE. To facilitate BA’s provision of such services, CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information (“**PHI**”) (defined below).

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“**HITECH Act**”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“**HIPAA Regulations**”) and other applicable laws, including without limitation state patient privacy laws (including the Lanterman-Petris-Short Act), as such laws may be amended from time to time. This BAA shall be governed by and construed in accordance with the laws of the State of California.

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI (defined below), as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“**C.F.R.**”) and contained in this BAA.

**NOW, THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, CE and BA agree as follows:

### AGREEMENT

#### **I. Definitions.**

**A. Breach** shall have the meaning given to such term under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

**B. Business Associate** shall have the meaning given to such term under 42 U.S.C. § 17921 and 45 C.F.R. § 160.103.



**C. Consumer** is an individual who is requesting or receiving mental health services and/or has received services in the past. Any consumer certified as eligible under the Medi-Cal program according to Title 22, Section 51001 is also known as a beneficiary.

**D. Covered Entity** shall have the meaning given to such term under 45 C.F.R. § 160.103.

**E. Data Aggregation** shall have the meaning given to such term under 45 C.F.R. § 164.501.

**F. Designated Record Set** shall have the meaning given to such term 45 C.F.R. § 164.501.

**G. Electronic Protected Health Information or EPHI** means Protected Health Information that is maintained in or transmitted by electronic media.

**H. Electronic Health Record** shall have the meaning given to such term under 42 U.S.C. § 17921(5).

**I. Health Care Operations** shall have the meaning given to such term under 45 C.F.R. § 164.501.

**J. Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**K. Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) 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, and shall have the meaning given to such term under 45 C.F.R. § 160.103. Protected Health Information includes Electronic Protected Health Information.

**L. Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.

**M. Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**N. Subcontractor** shall mean a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate, pursuant to 45 C.F.R. § 160.103.

**O. Unsecured PHI** shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act including, but not limited to that issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009), by the Secretary of the U.S. Department of Health and Human Services ("Secretary").

## II. Obligations of Business Associate.

**A. Permitted Access, Use or Disclosure.** BA shall neither permit the unauthorized or unlawful access to, nor use or disclose, PHI other than as permitted or required by the Agreement, this BAA, or as required by law, including but not limited to the Privacy Rule. To the extent that BA carries out CE's obligations under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule that apply to CE in the performance of such obligations. Except as otherwise limited in the Agreement, this BAA, or the Privacy Rule or Security Rule, BA may access, use, or disclose PHI (i) to perform its services as specified in the Agreement; and (ii) for the proper administration of BA, provided that such access, use, or disclosure would not violate HIPAA, the HITECH Act, the HIPAA Regulations, or applicable state law if done or maintained by CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) agreement from such third party to promptly notify BA of any Breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such Breach.

**B. Prohibited Uses and Disclosures.** Notwithstanding any other provision in this BAA, BA shall comply with the following requirements: (i) BA shall not use or disclose Protected Information for fundraising or marketing purposes, except as provided under the Agreement and consistent with the requirements of the HITECH Act, the HIPAA Regulations, and applicable state law, including but not limited to 42 U.S.C. § 17936, 45 C.F.R. § 164.508, and 45 C.F.R. § 164.514(f); (ii) BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, 42 U.S.C. § 17935(a); 45 C.F.R. § 164.522(a); (iii) BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. § 17935(d)(2); 45 C.F.R. § 164.502(a)(5); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

**C. Appropriate Safeguards.** BA shall comply, where applicable, with the HIPAA Security Rule, including but not limited to 45 C.F.R. §§ 164.308, 164.310, and 164.312 and the policies and procedures and documentation requirements set forth in 45 C.F.R. § 164.316, and shall implement appropriate safeguards designed to prevent the access, use or disclosure of Protected Information other than as permitted by the Agreement or this BAA. BA shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI.

### D. Reporting of Improper Access, Use, or Disclosure.

**1. Generally.** BA shall provide an initial telephone report to CE's Compliance Contact within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized access, use, or disclosure of PHI of which BA becomes aware and/or any actual or suspected access, use, or disclosure of data in violation of the Agreement, this BAA, or any applicable federal or state laws or regulations, including, for the avoidance of

doubt, any Security Incident (as defined in 45 C.F.R. § 164.304). BA shall take (i) prompt corrective action to cure any deficiencies in its policies and procedures that may have led to the incident, and (ii) any action pertaining to such unauthorized access, use, or disclosure required of BA by applicable federal and state laws and regulations.

**2. Breaches of Unsecured PHI.** Without limiting the generality of the reporting requirements set forth in Section D(1), BA shall report to CE any use or disclosure of the information not permitted by this BAA, including any Breach of Unsecured PHI pursuant to 45 C.F.R. § 164.410. Following the discovery of any Breach of Unsecured PHI, BA shall notify CE in writing of such Breach without unreasonable delay and in no case later than three (3) days after discovery. The notice shall include the following information if known (or can be reasonably obtained) by BA: (i) contact information for the individuals who were or who may have been impacted by the Breach (*e.g.*, first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery (as defined in 42 U.S.C. § 17932(c)); (iii) a description of the types of Unsecured PHI involved in the Breach (*e.g.*, names, social security numbers, date of birth, addresses, account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the BA has done or is doing to investigate the Breach and to mitigate harm to the individuals impacted by the Breach; (v) any other available information that CE is required to include in notification to the individual under 45 C.F.R. § 164.404.

**3. Mitigation.** BA shall establish and maintain safeguards to mitigate, to the extent practicable, any deleterious effects known to BA of any unauthorized or unlawful access or use or disclosure of PHI not authorized by the Agreement, this BAA, or applicable federal or state laws or regulations; provided, however, that such mitigation efforts by BA shall not require BA to bear the costs of notifying individuals impacted by such unauthorized or unlawful access, use, or disclosure of PHI, unless (i) otherwise agreed in writing by the parties, (2) BA bears responsibility for the unauthorized or unlawful access or use or disclosure of PHI, or (3) required by applicable federal or state laws or regulations; provided, further, however, that BA shall remain fully responsible for all aspects of its reporting duties to CE under Section D(1) and Section D(2).

**E. Business Associate's Subcontractors and Agents.** BA shall ensure that any agents or Subcontractors to whom it provides Protected Information agree to the same restrictions and conditions that apply to BA with respect to such PHI. To the extent that BA creates, maintains, receives or transmits EPHI on behalf of the CE, BA shall ensure that any of BA's agents or Subcontractors to whom it provides Protected Information agree to implement the safeguards required by Section C above with respect to such EPHI.

**F. Access to Protected Information.** To the extent BA maintains a Designated Record Set on behalf of the CE, BA shall make Protected Information maintained by BA or its agents or Subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.524. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. § 17935(e).

**G. Amendment of PHI.** To the extent BA maintains a Designated Record Set on behalf of CE, within ten (10) days of receipt of a request from the CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or Subcontractors shall make PHI available to CE so that CE may make any amendments that CE directs or agrees to in accordance with the Privacy Rule.

**H. Accounting Rights.** Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, BA and its agents or Subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.528, and its obligations under the HITECH Act, including but not limited to 42 U.S.C. § 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or Subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent BA maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include, to the extent known to BA: (i) the date of the disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. The accounting must be provided without cost to the individual or the requesting party if it is the first accounting requested by such individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, BA may charge the individual or party requesting the accounting a reasonable cost-based fee in responding to the request, to the extent permitted by applicable law, so long as BA informs the individual or requesting party in advance of the fee and the individual or requesting party is afforded an opportunity to withdraw or modify the request. BA shall notify CE within five (5) business days of receipt of any request by an individual or other requesting party for an accounting of disclosures. The provisions of this Section H shall survive the termination of this BAA.

**I. Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary for purposes of determining BA's compliance with the Privacy Rule. BA shall immediately notify CE of any requests made by the Secretary and provide CE with copies of any documents produced in response to such request.

**J. Minimum Necessary.** BA (and its agents or Subcontractors) shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Because the definition of "minimum necessary" is in flux, BA shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary." Notwithstanding the foregoing, BA must limit its (and its agents or Subcontractors) uses and disclosures of Protected Information to be consistent with CE's minimum necessary policies and procedures as furnished to BA.

**K. Permissible Requests by Covered Entity.** CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA or the HITECH Act if done by CE or BA. CE shall not direct BA to act in a manner that would not be compliant with the Security Rule, the Privacy Rule, or the HITECH Act.

**L. Breach Pattern or Practice.** If CE knows of a pattern of activity or practice of the BA that constitutes a material breach or violation of BA's obligations under this BAA or other arrangement, CE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, CE must terminate the applicable Agreement to which the breach and/or violation relates if feasible. If BA knows of a pattern of activity or practice of an agent or Subcontractor that constitutes a material breach or violation of the agent or Subcontractor's obligations under its BAA or other arrangement with BA, BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BA must terminate the applicable agreement to which the breach and/or violation relates if feasible.

**III. Indemnification; Limitation of Liability.** To the extent permitted by law, BA shall indemnify, defend and hold harmless CE from any and all liability, claim, lawsuit, injury, loss, expense or damage resulting from or relating to the acts or omissions of BA or its agents, Subcontractors or employees in connection with the representations, duties and obligations of BA under this Agreement. Any limitation of liability contained in the applicable Agreement shall not apply to the indemnification requirement of this provision. This provision shall survive the termination of this BAA.

**IV. Business Associate's Insurance.** BA shall obtain insurance for itself and all its employees, agents and independent contractors in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate of Commercial General Liability insurance and Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) annual aggregate of Errors and Omissions insurance. The Errors and Omissions insurance shall cover, among other things, Breaches. If the general liability or the errors and omissions insurance do not cover, among other things, Breaches, Business Associate should also carry Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) annual aggregate of Cyber/Privacy insurance that covers, among other things, Breaches. BA shall provide CE with certificates of insurance or other written evidence of the insurance policy or policies required herein prior to execution of this BAA (or as shortly thereafter as is practicable) and as of each annual renewal of such insurance policies during the period of such coverage. Further, in the event of any modification, termination, expiration, non-renewal or cancellation of any of such insurance policies, BA shall give written notice thereof to CE not more than ten (10) days following BA's receipt of such notification. If BA fails to procure, maintain or pay for the insurance required under this section, CE shall have the right, but not the obligation, to obtain such insurance. In such event, BA shall promptly reimburse CE for the cost thereof upon written request, and failure to repay the same upon demand by CE shall constitute a material breach of this BAA.

**V. Term and Termination.**

**A. Term.** The term of this BAA shall be effective as of the Effective Date and shall terminate when all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, is destroyed or returned to CE.

**B. Termination.**

**1. Material Breach by BA.** Upon any material breach of this BAA by BA, CE shall provide BA with written notice of such breach and such breach shall be cured by BA within thirty (30) business days of such notice. If such breach is not cured within such time period, CE may immediately terminate this BAA and the applicable Agreement.

**2. Effect of Termination.** Upon termination of any of the agreements comprising the Agreement for any reason, BA shall, if feasible, return or destroy all PHI relating to such agreements that BA or its agents or Subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, BA shall continue to extend the protections of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

**VI. Assistance in Litigation.** BA shall make itself and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Agreements or this BAA available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its shareholders, directors, officers, agents or employees based upon a claim of violation of HIPAA, the HITECH Act, or other laws related to security and privacy, except where BA or its subcontractor, employee or agent is named as an adverse party.

**VII. Compliance with State Law.** Nothing in this BAA shall be construed to require BA to use or disclose Protected Information without a written authorization from an individual who is a subject of the Protected Information, or without written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

**VIII. Compliance with 42 C.F.R. Part 2.** CE is also subject to the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 C.F.R. Part 2, which requires certain programs to enter into contracts with qualified service organizations (as defined in 42 C.F.R. § 2.11) that may have access to certain patient medical information. BA acknowledges that in receiving, storing, processing, or otherwise dealing with any Records (as defined in 42 C.F.R. Part 2) from CE, BA is fully bound by 42 C.F.R. Part 2. BA agrees to resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 C.F.R. Part 2. To the extent any provisions of 42 C.F.R. Part 2 restricting disclosure of Records are more protective of privacy rights than the provisions of this BAA, HIPAA, the HITECH Act, or other applicable laws, 42 C.F.R. Part 2 controls.

**IX. Amendment to Comply with Law.** Because state and federal laws relating to data security and privacy are rapidly evolving, amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. BA and CE shall take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. BA shall provide to CE satisfactory written assurance that BA will adequately safeguard all PHI. Upon the request of either party, the other party shall promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the applicable

Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this Section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its reasonable discretion, deems sufficient to satisfy the standards and requirements of applicable laws, within thirty (30) days following receipt of a written request for such amendment from CE.

**X. No Third-Party Beneficiaries.** Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**XI. Notices.** All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier addressed as follows:

**If to CE:**

Tri-City Mental Health Authority  
1717 N. Indian Hill Blvd., Suite B  
Claremont, CA 91711  
Attn: Privacy Officer

**If to BA:**

**With a copy to:**

Hooper, Lundy & Bookman, P.C.  
1875 Century Park East, Suite 1600  
Los Angeles, CA 90067  
Attn: Linda Kollar, Esq.  
Fax: 310-551-8181

or to such other persons or places as either party may from time to time designate by written notice to the other.

**XII. Interpretation.** The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. Any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

**XIII. Entire Agreement of the Parties.** This BAA supersedes any and all prior and contemporaneous business associate agreements or addenda between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter

hereof. Each party to this BAA acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

**XIV. Regulatory References.** A reference in this BAA to a section of regulations means the section as in effect or as amended, and for which compliance is required.

**XV. Counterparts.** This BAA may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this BAA as of the BAA Effective Date.

**AGREED AND ACCEPTED:**

TRI-CITY MENTAL HEALTH  
AUTHORITY

\_\_\_\_\_  
**Name of Covered Entity**

\_\_\_\_\_  
**Name of Business Associate**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Title**

\_\_\_\_\_  
**Print Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**



**EXHIBIT D**

**CONTRACTOR'S ATTESTATION THAT NEITHER IT NOR ANY OF ITS STAFF MEMBERS ARE RESTRICTED, EXCLUDED OR SUSPENDED FROM PROVIDING GOODS OR SERVICES UNDER ANY FEDERAL OR STATE HEALTH CARE PROGRAM**

Contractor's Name	Last	First
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Contractor hereby warrants that neither it nor any of its staff members is restricted, excluded, or suspended from providing goods or services under any health care program funded by the Federal or State Government, directly or indirectly, in whole or in part, and the Contractor will notify the Tri-City Mental Health Authority (TCMHA) within thirty (30) days in writing of: 1) any event that would require Contractor or a staff member's mandatory exclusion or suspension from participation in a Federal or State funded health care program; and 2) any exclusionary action taken by any agency of the Federal or State Government against Contractor or one or more staff members barring it or the staff members from participation in a Federal or State funded health care program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

Contractor shall indemnify and hold TCMHA harmless against any and all loss or damage Contractor may suffer arising from the Federal or State exclusion or suspension of Contractor or its staff members from such participation in a Federal or State funded health care program.

Failure by Contractor to meet the requirements of this paragraph shall constitute a material breach of contract upon which TCMHA may immediately terminate or suspend this Agreement.

**Is Contractor/Proposer/Vendor or any of its staff members currently barred from participation in any Federal or State funded health care program?**

\_\_\_\_\_ **NO**, Contractor or any of its staff members is not currently barred from participation in any Federal or State funded health care program.

\_\_\_\_\_ **YES**, Contractor or any of its staff members is currently barred from participation in any Federal or State funded health care program. Describe the particulars on a separate page.

Date	Contractor or Vendor's Name	Contractor or Vendor's Signature
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Date	TCMHA Executive Official's Name	TCMHA Executive Official's Signature
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                           Finance