

COUNTY OF KERN

**KERN BEHAVIORAL HEALTH
& RECOVERY SERVICES**

REQUEST FOR APPLICATIONS (RFA)

TO PROVIDE

**CERTIFICATION REVIEW
HEARING OFFICERS SERVICES**

DUE: AUGUST 18, 2025

TIME: BEFORE 11:00 A.M.

COUNTY OF KERN

KERN BEHAVIORAL HEALTH & RECOVERY SERVICES

Request For Applications To Provide Certification Review Hearing Officers Services

The County of Kern is seeking qualified attorney’s, licensed in the State of California to act as Certification Review Hearing Officers in connection with Certification Hearings pursuant to Welfare and Institutions Code Section 5256 and Capacity Hearing pursuant to Welfare and Institutions Code Section 5332 for adult and minor mental health clients who have been involuntarily detained at County inpatient psychiatric facilities.

Applicants are specifically directed not to contact any County personnel, other than the Contact Person indicated below, for any purpose related to this RFP. **Unauthorized contact of any County personnel may be cause for rejection of a vendor’s application.** All inquiries concerning this RFP should be directed to the following Contact Person:

Kern Behavioral Health & Recovery Services
2001 – 28th Street
Bakersfield, CA 93301
jscales@kernbhrs.org

Envelopes containing the Application are to be marked:

PROPOSAL: Request For Applications To Provide Certification Review Hearing Officers Services in Kern County

The following dates are set forth for information and planning purposes only. These dates may be changed by County upon notice to prospective Applicants:

APPLICATION ISSUANCE AND DUE DATE

Issuance Date July 16, 2025
Proposal Due Date August 18, 2025
Proposal Due Time Before 11:00 a.m.

Postmark date will not constitute timely delivery. Responses received after the above time **will not** be considered. Proposers are solely responsible for ensuring timely receipt of their Proposals.

If hand delivery is planned to our offices, please be aware that delays through building security protocol should be planned for by the proposer since timely receipt of all Proposals is required.

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A. INTRODUCTION

Kern County spans 8,161 square miles in the San Joaquin Valley of California. The County is divided into eleven (11) Geographic Service Areas for serving individuals needing mental health care. Based on a January 2, 2025, report issued by the Department of Finance, Kern County's population is 922,529. The California Economic Forecast report indicated that the County would continue to attract new residents over the forecast horizon and the growth of population will modestly accelerate.

The Kern Behavioral Health and Recovery Services (KernBHRS) administration office is located in Bakersfield, the county seat, in the southern region of the San Joaquin Valley. The Department operates under the directorship of Ms. Alison Burrowes, MS., LCSW, and is governed by the five (5) members of the Kern County Board of Supervisors (BOS). The Department strives to promote its mission statement, "Working together to achieve hope, healing, and a meaningful life in the community".

The Department's goal is to ensure the citizens of Kern County who are afflicted with mental and behavioral health disorders are provided with services and resources necessary for their treatment and recovery. The Department utilizes the services of contracted providers for mental and behavioral health treatment services for adults and minors in most geographic areas throughout Kern County.

B. PATIENTS' RIGHTS DIVISION

The Department consists of various Systems of Care to serve specific client populations. The Patients' Rights Division primarily serves adults and minors. Certification Review Hearing Officers focus on adults and minors involuntarily detained at inpatient psychiatric facilities in Kern County.

They act on behalf of the detained clients to inform the clients regarding the details of their detainment, advise them of their patients' rights, and inform them of their right to appeal the decision of the hearing.

Certification Review Hearing Officers also conduct capacity hearings (proceedings to determine an individual's capacity to refuse psychiatric medications), and file judicial reviews as requested by the detained individual.

C. REQUIREMENTS

I. DESIRED APPLICANTS

This Request for Application (RFA) is seeking qualified Certification Review Hearing Officers to preside at Certification Review Hearings, mandated by the State of California, for clients held involuntarily pursuant to the Lanterman-Petris-Short Act, California Welfare & Institutions Code § 5000 et seq. Certification Review Hearing Officers must be attorney's license in the State of California.

These hearings are conducted to determine whether or not probable cause exists to detain a behavioral health client for intensive treatment related to a mental disorder or impairment by chronic alcoholism.

Certification Review Hearings take place within the business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m., and are conducted at the psychiatric facility where the mental health client has been involuntarily detained or the Psychiatric Evaluation Center (PEC).

The six designated County psychiatric facilities located in greater Bakersfield are: Good Samaritan Hospital, Bakersfield Behavioral Health Hospital, Crestwood Psychiatric Hospital Facility, Kern Medical Center, Kern Psychiatric Health Facility for Adults, and Kern Youth Psychiatric Health Facility. These locations are compatible with, and are the least disruptive of, the treatment being provided to the client.

Capacity Hearings

As stated in Welfare and Institutions Code, Section 5334, Paragraph C, Capacity hearings shall be conducted by a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer. All commissioners, referees, and hearing officers shall be appointed by the superior court from a list of attorneys unanimously approved by a panel composed of the local behavioral health and recovery services director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. These hearing officers are eligible to preside as a Judge Pro Tempore.

No employee of the county behavioral health and recovery services program or of any facility designated by the county and approved by the department as a facility for 72-hour treatment and evaluation may serve as a hearing officer. All hearing officers shall receive training in the issues specific to capacity hearings.

Capacity hearings also take place within the business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m., and are conducted at the psychiatric facility where the mental health client has been involuntarily detained.

II. CONTRACT NEGOTIATIONS

Behavioral Health and Recovery Services intends to enter into three (3) contracts with attorneys that are qualified Certification Review Hearing Officers with services to begin on **September 23, 2025**. The Department expects to spend approximately \$1,200,000 per fiscal year for these services.

III. SERVICES REQUIRED OF SUCCESSFUL APPLICANT

BHRS has developed the attached sample **Exhibit A, Sample Description and Standards of Services**, which fully describes the scope of work and services required. It is included in this RFA for informational purposes. However, this Exhibit is in substantially the form the successful Applicants may be expected to sign.

Applicants will be expected to review Exhibit A to understand the expected outcome, what the desired goals and objectives are, what specific problems and challenges need to be solved in order to achieve the required end result.

IV. STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

No agreement with the County is in effect until a contract has been signed by both parties. Attached to this RFA is an **excerpt of Exhibit "B" is the Sample Standard Agreement For Professional Services.**

Until such time as the Evaluation Committee has completed its deliberative process and the matter has been set for consideration before the Board of Supervisors, all matters concerning this RFA **shall be confidential.**

The **Exhibit "B" - Sample Standard Agreement for Professional Services** is included in this RFA is for informational purposes and should not be returned with a Proposal.

V. ADDITIONAL REQUIRED DOCUMENTATION

The successful Applicant will be required to comply with the following prior to proceeding with performing the provisions of the contract:

1. Disclosure of Ownership: provide disclosures of ownership and control. A Disclosure of Ownership form will be provided to the successful contractor by KernBHRS once a contract is awarded.

2. Screening for Ineligible and Suspended Employees and Entities (Exclusions): evidence that the contractor is not identified on the List of Excluded Individuals/Entities (LEIE), the General Services Administration Excluded Parties List System (SAM-EPLS), the DHCS Medi-Cal List of Suspended or Ineligible Providers nor the Social Security Administration's Death Master File (SSA DMF), and that the contractor will not employ individuals or contract with individuals or vendors that are excluded from participation in Federal health care programs. Additionally, KernBHRS has a process in place to verify the accuracy of new and current (prior to contracting with and periodically) providers and contractors in the National Plan and Provider Enumeration System (NPPES).

3. Credentialing Requirements: evidence that the assigned staff to perform the services under the provisions of the signed contract as a result of this RFP are:

- ❖ Qualified in accordance with current legal, professional, and technical standards and are appropriately licensed, registered, waived and/or certified.
- ❖ Must be in good standing with the Medicaid/Medi-Cal programs.
- ❖ Any staff excluded from participating in Federal health care programs, including Medicare or Medicaid/Medi-Cal, may not participate in performing the provisions of the signed contract as a result of this RFP.

4. Pre-Award Risk Assessment: this form is an evaluation of the proposer's history, performance, financial status, and the management systems of the organization. This tool allows KernBHRS to determine if adequate systems are in place to appropriately account for allowable and unallowable costs, documentation of expenditures, allocation of costs, cash management, and internal controls.

5. W-9: a completed W-9 form identifying the business entity, federal tax classification and tax identification number (either SSN or EIN).

6. Corporate Compliance: evidence of a comprehensive Corporate Compliance Program that includes auditing, monitoring, and reporting methods designed to guard against fraud, waste, and abuse.

7. Credentialing, Exclusion Reporting and Corporate Compliance Form (CECC): a form to be completed by the successful contractor regarding credentialing, exclusion reporting and corporate compliance program.

8. Insurance Certificate: evidence of insurance as required by the County of Kern that includes all necessary endorsement forms and language to perform the provisions of the contract.

VI. AWARD PROCESS

The Application of the applicants will first be screened for eligibility and then evaluated on a competitive basis. Recommendations from the evaluation committee will be forwarded to BHRS Director for approval.

VII. ELIGIBILITY PROCESS

In order to be considered eligible applicants must be an attorney, submit an application packet that consists of a statement of qualifications, resume, curriculum vitae, and professional references that demonstrates prior Certification Review Hearing Officer related skills or experience. The application packet must also include a statement that the proposer will obtain the insurance as required in the attached sample agreement.

The Behavioral Health and Recovery Services Department will review the information submitted to determine if applicants meet the minimum qualification requirements. All applicants who meet the qualification requirements will be referred to the Evaluation Committee.

VIII. ADDITIONAL ELIGIBILITY CRITERIA

The Application of the applicants will also be screened for eligibility based on the additional criteria:

- ❖ Ability to clearly communicate Certification Review process to individuals served.
- ❖ Ability to fairly, efficiently and effectively conduct Certification Review hearings.
- ❖ Knowledge of mental illnesses and other disabilities as they potentially relate to mental illnesses.
- ❖ Knowledge of and sensitivity to the applicable legal requirements and procedures of the Welfare and Institutions Code and the Constitutional rights of individuals held involuntarily.
- ❖ Knowledge of case law pertaining to involuntary mental health treatment and the Certification court decisions.

- ❖ Knowledge of the Lanterman-Petris-Short (LPS) Act; specifically, those portions pertaining to involuntary mental health treatment and the Certification and Review process.
- ❖ Experience serving as an impartial decision-maker in contested proceedings.

IX. EVALUATION COMMITTEE

The Application of the applicants will be evaluated by an evaluation committee appointed by the Board Of Supervisors. The evaluation committee members will consist of behavioral health and recovery services director, the county public defender, and the county counsel or district attorney and be familiar with the needs of the Patient Division. Each eligible application will then be evaluated on a competitive basis. Recommendations from the evaluation committee will be forwarded to BHRS Director for approval.

X. THE EVALUATION PROCESS

Depending on the number of applicants, the Evaluation Committee may either select to interview the most qualified applicants (based on the information submitted by applicants) or interview all applicants. Applicants selected for interview will be rated by the Evaluation Committee Applicants who are rated 85% or higher are considered the most qualified applicants.

Only three (3) qualified applicants will be offered the opportunity to enter into a Contract to provide Certification Review Hearing Officer Services for a term that will not exceed four fiscal years. Once successfully negotiated, each Agreement will be submitted to the Board of Supervisors for approval.

XI. THE APPLICATION PACKET

1. Cover Page

a. The applicant's name, contact information, and Request for Application for Certification Review Hearing Officers must appear on cover sheet.

2. Letter of Introduction

a. The applicant must include a letter of introduction expressing their interest, skills, and experience as it relates to providing Certification Review Hearing Officers services.

b. The letter must also include a statement that attests that all information in the application packet is true and correct; and that any false information contained in the packet shall entitle Kern County to pursue any and all remedies authorized by law and/or declare any contract made as a result thereof, to be void.

3. Statement of Qualifications

a. Names of the organization in which the applicant provided Hearing Officer Services or related skills.

b. Length of time the applicant provided the service.

c. Applicant's experience providing the service for each organization listed.

The applicant may include additional information that further describes their experience as a Certification Review Hearing Officer or related skills.

4. Professional Resume

5. Curriculum Vitae

a. Summary of the applicant's educational and academic backgrounds as well as teaching and research experience, publications, presentations, awards, honors, affiliations, and other details.

6. Professional References

a. Provide four professional references that can verify the applicant's prior experience or related skills.

Be sure to include the names, addresses and telephone numbers of each reference.

Failure to provide a list of at least four business references may be cause for the rejection of your application packet.

7. Insurance

A. Hearing Officer, in order to protect County and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss, and damage as a result of Hearing Officer's actions in connection with the performance of Hearing Officer's obligations, as required in this agreement, shall secure and maintain insurance as described below. Hearing Officer shall not perform any work under this agreement until Hearing Officer has obtained all insurance required under this section, and the required certificates of insurance and all required endorsements have been filed with the Department's Contracts Division. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein.

B. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Hearing Officer shall supply proof that such person is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

C. Hearing Officer shall promptly deliver to the Department's Contracts Division certificates of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to Department's Contracts Division prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Hearing Officer shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Hearing Officer or County as an additional insured.

1. Liability Insurance Requirements:

Hearing Officer shall maintain in full force and effect, at all times during the term of this agreement, the following insurance:

a. Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this agreement with the county), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Hearing Officer's performance of work under this agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Hearing Officer shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this agreement. The amount of said insurance coverage required by this agreement shall be the policy limits, which shall be at least **ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate.**

b. Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least **THREE HUNDRED THOUSAND DOLLARS (\$300,000)** for each accident, **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** for each person, and **FIFTY THOUSAND DOLLARS (\$50,000) property damage.**

c. If any of the insurance coverages required under this agreement is written on a claims-made basis, Hearing Officer, at Hearing Officer's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this agreement with coverage extending back to the effective date of this agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. Cancellation of Insurance:

The above-stated insurance coverages required to be maintained by Hearing Officer shall be maintained until the completion of all of Hearing Officer's obligations under this agreement except as otherwise indicated herein. Each insurance policy supplied by the Hearing Officer must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. Hearing Officer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

E. All insurance shall be issued by a company or companies admitted to do business in the State of California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County's Risk Manager.

F. If Hearing Officer is, or becomes during the term of this agreement, self-insured or a member of a self-insurance pool, Hearing Officer shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Hearing Officer is equivalent to the above-required coverages.

G. contributing to all insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the county.

H. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Hearing Officer for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude County from taking such other actions as are available to it under any other provision of this agreement or otherwise in law.

I. Failure by Hearing Officer to maintain all such insurance in effect at all times required by this agreement shall be a material breach of this agreement by Hearing Officer. County, at its sole option, may terminate this agreement and obtain damages from Hearing Officer resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Hearing Officer, County shall deduct from sums due to Hearing Officer any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Hearing Officer pursuant to this agreement is insufficient to reimburse County for the premiums and any associated costs, Hearing Officer agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Hearing Officer of its obligation to obtain and maintain the insurance coverages required by this agreement.

XII. APPLICATION ISSUANCE AND DUE DATE

Issuance Date July 16, 2025
Proposal Due Date August 18, 2025
Proposal Due Time Before 11:00 a.m.

Request for Applications (RFA) received for this initial opening will establish contracts in which services will begin on **September 23, 2025**.

XIII. APPLICATION SUBMISSION: PHASE I: INITIAL OPENING AND CLOSING DATE

The applicant shall **submit six (6) written copies of the application and one (1) copy on thumb drive**. The thumb drive (virus free) must be a standard Microsoft Windows (Word, Adobe, Excel etc.) compatible format readable by the County; using word processing software that is Windows based, preferably Microsoft Word. Applicants agrees to be fully responsible for any damage caused by any materials submitted to County. Please submit all Proposals to:

Kern County General Services Division
**REQUEST FOR APPLICATIONS TO PROVIDE:
CERTIFICATION REVIEW HEARING OFFICERS SERVICES IN KERN COUNTY**
1115 Truxtun Ave., 3rd Floor
Bakersfield, CA 93301
Telephone (661) 868-3000

Proposals may be delivered in person, by courier service or by mail to the address indicated above. **ALL PROPOSALS MUST BE SEALED AND RECEIVED BEFORE 11:00 A.M. on August 18, 2025** at the above office and address.

Application packets submitted after the above deadline will not be accepted. It is strongly suggested that any proposers intending to hand deliver a proposal on the last day for submission arrive at the General Services Division third floor main lobby at least ten (10) minutes prior to the proposal receipt deadline to receive a “test” time stamp to validate the official current time. The time stamp clock in the main lobby of General Services will be the official time. **Any application packet received at or after 11:00 a.m. will be returned unopened.**

D. SCOPE OF WORK SPECIFICATIONS AND REQUIREMENTS

EXHIBIT A - SAMPLE DESCRIPTION AND STANDARDS OF SERVICES

CERTIFICATION REVIEW HEARING OFFICERS SERVICES

I. BACKGROUND

Hearing Officers shall preside at Certification Review Hearings, mandated by the State of California, for clients held involuntarily at three designated County psychiatric facilities, located in greater Bakersfield, pursuant to the Lanterman-Petris-Short Act, California Welfare & Institutions Code § 5000 et seq.

Hearings take place within the business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m., and are conducted at the psychiatric facility where the mental health client has been involuntarily detained.

The Department will spend an estimated \$1,200,000 for certification review and capacity hearings in FY 2025-2026. The proposed funding levels may change in any agreement resulting from the Request For Applications (RFA). Figures are provided for planning purposes only. Services shall begin on September 23, 2025.

II. DESIRED OBJECTIVES

Hearing Officer shall serve as a certification review hearing officer and shall hear evidence, both in support of and in rejection of the certification decision. At the conclusion of the hearing, the hearing officer will determine whether or not there is probable cause to believe that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.

Hearing Officers who additionally preside as a Judge Pro Tempore in capacity hearings shall hear evidence in support of and rejection of a person's legal capacity to refuse treatment with antipsychotic medication.

III. ESTIMATED VALUE/COST

Kern County Behavioral Health and Recovery Services expects to allocate approximately \$1,200,000 for hearing officer services for the FY 2025-2026. The Department will negotiate the actual funding amounts for services with the individual Hearing Officer prior to executing the agreement.

IV. BUSINESS AND/OR WORK ENVIRONMENT

Hearing Officer shall take steps necessary to maintain certifications and/or licensures needed to serve as certification review hearing officers.

Absent unforeseen circumstances, or unless other arrangements have been made in advance of the scheduled hearing, be available at all hearings as scheduled or otherwise arranged to conduct the hearings.

If the scheduled hearing officer is unavailable to conduct the hearing due to unforeseen circumstances and is unable to make substitute arrangements in a timely fashion, the scheduled hearing officer must contact the Patients' Rights Advocate Superior as soon as possible after these facts become known to the hearing officer. The Hearing Officer will contact the Patients' Rights Advocate Superior no less than 1 hour prior to the scheduled hearing.

Hearing Officer shall recuse himself or herself if there is a conflict of interest between the patient and the hearing officer and continue the hearing at which the conflict has been raised for that period of time permitted under the law in order to secure the presence of another hearing officer.

With exception of good cause as determined by the hearing officer, Hearing Officer will ensure that all hearings are electronically recorded. The hearing officer will be provided the proper equipment for the task.

Suggested Language: Hearing officer will ensure that all hearings are electronically recorded according to county policy and in accordance with any laws protecting patient information. If, in a Probable Cause hearing, a patient and or doctor does not wish to be recorded, the hearing officer shall continue with the hearing, off the record. The hearing officer may also determine if other good cause exists not to record a probable cause hearings.

All capacity hearings must be recorded in accordance with the law.

V. HOURS OF SERVICE

Hearing Officer shall provide services during regular business hours, between 8:00 a.m. and 5:00 p.m. Monday through Friday.

VI. TIMEFRAME FOR DELIVERY OF SERVICES

Hearing officer services shall begin as determined by the department. The term of Agreement shall be determined by the department. The Agreement will be subject to renewal, based upon satisfactory performance and mutual agreement, each fiscal year.

VII. INFORMATION TECHNOLOGY INFRASTRUCTURE

Hearing Officer shall make reports as required by Director, Director's designee or State regarding Hearing Officer's activities and operations as they relate to Hearing Officer's performance under this Agreement. Hearing Officer shall secure and maintain Digital Subscriber Line (DSL), or other comparable high speed internet access, in or to access Department policies and procedures.

Hearing Officer must request a Virtual Private Network ("VPN") number to access County databases.

VIII. DESCRIPTION AND SCOPE OF WORK

A. Scope of Work

The Hearing Officer shall provide certification review hearing officer services for adults and minors involuntarily detained at County inpatient psychiatric facilities in Kern County. Many of these

individuals may have co-existing conditions such as substance use disorders, homelessness or involvement in the criminal justice system.

Hearing Officer shall advise patients involved in the various hearings provided for hereunder as to the nature of the particular hearing and the patient's rights at the particular hearing, including the patient's right to appeal the decision following the hearing.

Hearing Officer shall conduct the hearing as required by law, in a fair and impartial manner, and with a view to the expeditious ascertainment of the facts relevant to the issues to be determined at the particular hearing.

Hearing Officer shall control all proceedings with a view to the orderly administration of justice. Hearing Officer shall announce the hearing officer decision at the close of the hearing.

As soon after the conclusion of the hearing as is practical, Hearing Officer shall provide written notification of the decision, including a statement of the evidence relied upon and the reasons for the decision, to the Patients' Rights Advocate and the director of the facility where the person is receiving treatment.

Hearing officers are encouraged to report to the appropriate supervisor(s) any concerns as to the conduct of the hearings by the Patients' Rights Advocate or the hospital representative which cannot be resolved informally, or at the hearing officers' training sessions, or are not appropriate for such resolution.

B. Language and Cultural Competence

Limited English Proficient (LEP) individuals have a right to free language assistance services, and to be informed how to access such services. Hearing Officer shall document that the individual was offered interpreter services. Hearing Officer shall ensure the interpreters are trained and monitored for language competence.

IX. DELIVERABLES

A. Certification Review Hearings

1. Hearing Officer shall conduct certification review hearings for adult and minor mental health clients who have been involuntarily detained at County inpatient psychiatric facilities.
2. Hearing Officer shall serve as a certification review hearing officer and be paid at the rate of FIFTY-FIVE DOLLARS (\$55.00) per hearing, with a minimum guarantee of payment for four (4) certification hearings at each facility session. A session includes participation at one facility. Each session shall consist of one or more hearings, as dependent on caseload.
3. In the event that the Hearing Officer is required at multiple inpatient psychiatric facilities on the same day, the hearing officer will be compensated FIFTY-FIVE DOLLARS (\$55.00) per hearing, with a minimum guarantee of payment for four (4) certification hearings at each facility session.
4. In the event that the Hearing Officer is requested by an inpatient facility to conduct an unscheduled certification review hearing, the Hearing Officer will be compensated at a rate of

FIFTY DOLLARS (\$50.00) per hearing, with a minimum guarantee of payment for four (4) certification hearings at each facility session.

B. Capacity/Riese Hearings

1. Hearing Officer may preside over capacity hearings for adult and minor mental health clients who have been involuntarily detained at inpatient psychiatric facilities contracted with the county who refuse antipsychotic medication as part of treatment.
2. Hearing Officer will preside as Judge Pro Tempore for capacity hearings and be paid at a rate of ONE HUNDRED FIFTY-FIVE (\$155.00) per capacity hearing. In order to serve in this capacity, the attorney must have been a lawyer for 10 years and received in-person training from the Superior Court of California, County of Kern.
3. In the event that the capacity hearings are required at multiple inpatient facilities on the same day, the Judge Pro Tempore will be compensated ONE HUNDRED FIFTY-FIVE (\$155.00) per scheduled capacity hearing.
4. In the event the Hearing Officer is scheduled in advance to preside as a capacity hearing Judge Pro Tempore and the scheduled hearing is cancelled by the treating hospital, or postponed by the Patients' Rights Advocate, the Judge Pro Tempore will be compensated at the rate of ONE HUNDRED FIFTY-FIVE (\$155.00) per scheduled capacity hearing.

C. Retainer Fee

Hearing Officer shall be paid a one-time retainer fee not to exceed a maximum of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) at the beginning of each fiscal year of the agreement, not to exceed more than THREE THOUSAND DOLLARS (\$3,000) over the course of this agreement.

Payments to Hearing Officer shall be made only upon County's receipt of a Claim for Payment form. Such claim shall be submitted to the Department within twenty-five (25) calendar days following the end of the month in which services are provided. Hearing Officer's claims submitted beyond the twenty-five (25) day period may be accepted at County's sole discretion. However, such claims must be filed no later than four (4) months following the month that services are rendered.

Hearing Officer shall implement appropriate safeguards and maintain individually identifiable patient health information (Protected Health Information or "PHI", including electronic PHI) as required by the Health Insurance Portability and Accountability Act (HIPAA). Additionally, Hearing Officer agrees to notify the County of disclosures of protected health information in violation of HIPAA and take steps to mitigate, to the extent practicable, deleterious effects of improper use of protected health information.

D. Insurance Expenses

Hearing Officers will be reimbursed no more than TWO HUNDRED FIFTY DOLLARS (\$250) for the additional expense of obtaining automobile insurance required in this agreement which is in excess of the hearing officers' current policy. The automobile insurance policy shall meet the minimum standards as described in the section 30 of this agreement. The claim for

reimbursement of the additional expense shall be accompanied by an invoice from the insurance carrier or broker that itemizes the additional charges.

X. CONTRACTORS LICENSING, CERTIFICATIONS AND QUALIFICATIONS

Hearing Officers are retained by Kern County Behavioral Health and Recovery Services, under contract to conduct certification review hearings for adults and minors involuntarily detained at County inpatient psychiatric facilities in Kern County.

Hearing Officers who are attorneys and appointed as Judge Pro Tempore by the superior court and unanimously approved by a panel composed of the local behavioral health and recovery services director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors, may preside in capacity hearings for adults and minors involuntarily detained at County inpatient psychiatric facilities in Kern County.

No employee of the Kern County Behavioral Health and Recovery Services or of any facility designated by the County and approved by the Department of Health Care Services, to serve as a seventy-two (72) hour psychiatric treatment and evaluation facility, may act as a certification review hearing officer.

XI. PERFORMANCE STANDARDS AND QUALITY ASSURANCE

The County has established the following measures to monitor certification review hearing officers' performance:

- A. Bi-annual evaluation surveys
- B. Observation of hearings

All services shall be delivered in a manner that respects the ethnic and cultural diversity of the community it serves. This includes bilingual staff and volunteers whenever possible.

XII. TRAINING

Hearing officers have the opportunity to participate in quarterly hearing officer training, facilitated by the Patients' Rights Office. The training reviews relevant legal and procedural issues pertaining to the various hearing processes.

Hearing officers who attend will be compensated at the rate of THREE HUNDRED DOLLARS (\$300.00) per training session.

XIII. CONSTRAINTS TO PROPOSER'S APPROACH AND METHODOLOGY

Hearing Officers are often faced with the following challenges that restrict or impact the delivery of certification review hearing services:

- A. Potentially dangerous patients on the inpatient psychiatric facility units.
- B. Potentially minimal evidence presented during hearings in order to make clear determination of danger to others, danger to self, or grave disability.

XIV. SECURITY REQUIREMENTS

The following is a general outline of the Security and Information Technology Requirements as part of this proposal.

Protected Health Information is subject to protection under the state and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology Economic and Clinical Health Act (HITECH Act).

Hearing Officer shall become a Business Associate of the County under the HIPAA and HITECH Act, and shall sign the Business Associate Addendum included in the Agreement for Professional Services.

Kern County Behavioral Health and Recovery Services is required to comply with the Information Exchange Agreement between the Social Security Administration and the California Department of Health Care Services (state agency). Agencies contracting with the County of Kern through its Behavioral Health and Recovery Services Department are expected to adhere to the guidelines stated in the Information Exchange Agreement.

XV. SUMMARY OF DESIRED OUTCOMES AND DELIVERABLES

The desired objectives of this RFA are to obtain high quality certification review hearing officers who are competent in interpreting the legal standards under the Lanterman-Petris-Short (LPS) Act for danger to others, danger to self, and grave disability, and able to make appropriate determinations in hearings whether to uphold certifications of individuals involuntarily placed in inpatient psychiatric facilities for treatment.

The Hearing Officer's performance will be evaluated upon the Hearing Officer's ability to communicate scheduling needs and maintain good status of attendance and timeliness, accuracy and efficiency in obtaining evidence and making legally sound determinations, and professionalism in appearance and behavior.

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E. AGREEMENT FOR PROFESSIONAL SERVICES

EXHIBIT B – SAMPLE AGREEMENT FOR PROFESSIONAL SERVICES

NOTE:

THIS IS AN EXCERPT OF A SAMPLE AGREEMENT. THE ACTUAL CONTRACT WILL BE PRESENTED AND DISCUSSED DURING CONTRACT NEGOTIATIONS.

INDEPENDENT CONTRACTOR

(COUNTY OF KERN – CONTRACTOR NAME)

CERTIFICATION REVIEW HEARING OFFICER SERVICES

THIS AGREEMENT is made and entered into on _____, by and between the County of Kern (“County”), a political subdivision of the State of California, as represented by the Behavioral Health and Recovery Services Department (“County”, “KernBHRS” or “Department”), and <<CONTRACTOR NAME>> (“Contractor”), a «LegalStatus», [whose principle place of business is] [with its principal place of business] located at <<Street Address>>, <<City>>, <<State>>, <<Zip>>.

WITNESSETH:

WHEREAS:

- A.** Government Code sections 31000 and 53060 permit the County Board of Supervisors to contract for the furnishing of special services with individuals specially trained and experienced and competent to perform those services; and
- B.** The Department requires the services of qualified individuals to act as hearing officers in connection with Certification hearings pursuant to Welfare and Institutions Code Section 5256 and Capacity Hearing pursuant to Welfare and Institutions Code Section 5332; and
- C.** County desires to engage Hearing Officer to provide said services and Hearing Officer, by reason of Hearing Officer’s qualifications, experience, and facilities for doing the type of work herein contemplated, has offered to provide the required services in accordance with the terms set forth herein.

NOW, THEREFORE, IT IS AGREED between the parties hereto as follows:

1. TERM.

This Agreement shall commence on July 1, 20XX, and shall remain in effect through June 30, 20XX, unless sooner terminated as hereinafter provided.

2. MODIFICATIONS OF AGREEMENT.

Material changes to this Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

3. STANDARDS OF SERVICE.

A. Hearing Officer shall provide the services and adhere to the standards of service described in **Description and Standards of Services**, which is attached hereto and made a part hereof. Failure to comply with the standards of service shall be deemed a material breach of this agreement and may result in termination of the agreement.

B. Hearing Officer shall comply with all applicable regulations set forth by the California Department of Health Care Services (DHCS) and any other applicable governing bodies. By this reference, those regulations are made a part of this agreement. Additionally, County requires Hearing Officers to provide proof of adherence to specific administrative and ethical principles in order to be eligible to contract with County. .

4. COMPENSATION TO HEARING OFFICERS.

A. To be developed during contract negotiations.

5. PROGRAM DIRECTION, FISCAL AUDIT, INSPECTION, AND RETENTION OF RECORDS.

A. County's mental health services program administrator, as defined in [Welfare and Institutions Code Section 5607](#), shall be the Director of KernBHRS. Hearing Officer's services pursuant to this agreement shall be provided and performed under the Director's general guidance or his/her designated representative. It shall be Hearing Officer's responsibility to determine the specific means and methodology for accomplishing the services required under this agreement.

B. Hearing Officer agrees to maintain and make available to County all of its premises, physical facilities, documents, contracts, computers, other electronic systems, accurate books, and records relative to all activities of the organization, including client information, information related to Medi-Cal enrollees, Medi-Cal related activities and information included in personnel records, limited to that needed for the verification of credentialing, experience, background and payroll testing. Review of the organization's personnel files shall be subject to applicable confidentiality laws. Hearing Officer shall maintain such data and records in an accessible location and condition for a minimum of ten (10) years after the close of the fiscal year in which services are rendered or until all audit issues are resolved, whichever is later, in accordance with [42 CFR 438.3\(h\)](#), [42 CFR 438.3\(u\)](#), and [Welfare and Institutions Code, Section 14124.1](#). The State of California and/or any federal agency having an interest in the subject of this agreement shall have the same rights conferred upon County herein.

C. KernBHRS, DHCS, Centers for Medicare/Medicaid Services ("CMS"), or the Health and Human Services ("HHS") Inspector General may inspect, evaluate, and audit Hearing Officer at any time if there is a reasonable possibility of fraud or similar risk. The inspection shall occur at Hearing Officer's place of business, premises, or physical facilities. Hearing Officer shall make all of its books and records available, in a form maintained in accordance with general standards, applicable to such books or recordkeeping, for a term of at least ten (10) years from the close of the fiscal year in which the subcontract was in effect. Hearing Officer will need to contact County to ensure the time period for retaining these records has been exceeded before record destruction occurs. Hearing Officer shall inform KernBHRS of all scheduled and unscheduled audits that occur at Hearing Officer's place of business related to the services in this agreement and provide copies of all results and reports to KernBHRS. Additionally, Hearing Officer shall provide all results and/or audit reports to KernBHRS.

D. Hearing Officer shall permit County to audit, examine, and make excerpts and transcripts from such records; and to conduct audits, reviews, and monitoring of Medi-Cal and financial records; and all other data related to matters covered by this agreement. At County's discretion, County may request that Hearing Officer deliver by mail or electronic transmission to County, a copy of Hearing Officer's accounting records prior to an on-site audit by County. Failure by Hearing Officer to allow review shall be a material breach of this agreement by Hearing Officer. County, at its sole option, may terminate this agreement and obtain damages from Hearing Officer resulting from said breach, or County may exercise the option to withhold payments from Hearing Officer until such time as all required documents are made available. Further, as one component of Medi-Cal records review and financial monitoring, Hearing Officer may be required, at the sole option of County, to complete a Corrective Action Plan. County may exercise the option to withhold payments from the Hearing Officer until such time as County accepts the Corrective Action Plan.

6. TAX INFORMATION REPORTING

A. Hearing Officer shall submit its signed IRS form W-9, "Request for Taxpayer Identification Number and Certification," or Social Security Number, whichever is applicable, to facilitate appropriate fiscal management and reporting, and to ensure compensation is paid to the proper party. A new W-9 will need to be completed every five (5) years.

B. Upon County's request, Hearing Officer shall provide County with certain documents relating to Hearing Officer's employee income tax withholding. These documents shall include, but not be limited to:

1. A copy of Hearing Officer's federal and state quarterly income tax withholding returns, i.e., federal form 941 and state Form DE-9 or their equivalents.
2. A copy of a receipt for or other proof of payment of, each employee's federal and state income tax withholding, whether such payments are made on a monthly or quarterly basis.

7. COMPLIANCE WITH LAW

A. Hearing Officers shall observe and comply with all applicable county, state, and federal laws, ordinances, rules, and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference, including, but not limited to, [CCR Title 9, Chapter 11, Section 1810.436\(a\)\(1-5\) and 42 CFR § 438.230\(c\)\(2\), and 42 CFR § 438.3\(d\)\(3\)\(4\)](#) which provide that:

8. NOTICES

A. All notices required or provided for in this agreement shall be provided to the parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) business days after deposit. A party may change the address to which notice is to be given by giving notice as provided below.

To County:

Kern Behavioral Health and Recovery Services
Attn: Director
PO Box 1000
Bakersfield, CA 93302-1000

cc: Contracts Management

To Hearing Officer:

Signature Person
HEARING OFFICER
Street Address
City, State ZIP

B. County requires Hearing Officer to notify County thirty (30) days prior to any change in name, legal business status, corporate address, service site address, or Hearing Officer's signatory power that occurs during the term of this agreement. At its option, County may choose to acknowledge a notice of these specific changes without a written amendment to the agreement.

C. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this agreement by personal service.

9. MANDATORY MEETINGS

Hearing Officers are required to participate at meetings required by Patients' Rights Advocate Supervisor. Failure to comply with all applicable regulations may lead to termination of the Agreement.

10. TRANSLATION AND INTERPRETATION SERVICES

A. Hearing Officer shall make translation and interpretation services available for beneficiaries, as needed. Pursuant to [WIC Section 14029.91\(a\)\(1\)\(C\)](#), Hearing Officer shall not require a beneficiary with limited English proficiency to provide his or her own interpreter or rely on a staff member who does not meet the qualifications described in [WIC 14029.91\(a\)\(1\)\(B\)](#).

B. Hearing Officer shall not rely on an adult or minor child accompanying the limited-English-proficient beneficiary to interpret or facilitate communication except under the circumstances described in [WIC Section 14029.91 \(a\)\(1\)\(D\)](#).

C. Hearing Officer shall not require a beneficiary with limited English proficiency to accept language assistance services, pursuant to [45 CFR Section 92.201](#).

D. Hearing Officer shall notify its beneficiaries that oral interpretation is available for any language and written translation is available in prevalent languages to individuals whose primary language is not English. This may include, but is not limited to, qualified interpreters and information written in other languages.

E. Hearing Officer shall notify its beneficiaries that auxiliary aids and services are available upon request and at no cost for beneficiaries with disabilities to help them communicate better. These

aids and services may include qualified sign language interpreters and written information in other formats.

F. Pursuant to [WIC 14029.91\(a\)\(1\)\(B\)](#), oral interpretation services shall be provided by an interpreter that, at a minimum, meets all of the following qualifications:

11. NON-DISCRIMINATION AND FAITHFUL PERFORMANCE

A. The parties mutually agree to abide by all federal, state, and local laws including, but not limited to, all laws respecting employment discrimination. Each party further agrees to fully and faithfully perform all covenants and portions of this agreement, and to take no action that may be inimical to the other party's faithful performance hereof.

B. Hearing Officer shall provide services that incorporate the racial and ethnic values and beliefs of the client and shall deliver such services in a manner which meets the needs of the client and their families' lifestyles whenever possible.

C. Hearing Officer shall have in place written policies regarding nondiscrimination on the basis of race, color, creed, etc., and shall include nondiscrimination and compliance provisions in all subcontracts. Hearing Officer and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from discrimination and harassment.

12. ACCREDITATION

Hearing Officer shall inform KernBHRS if it has been accredited by a private independent accrediting entity. Hearing Officer shall authorize the accrediting agency to provide KernBHRS with a copy of its most recent accreditation review, including: the accreditation status, survey type, and level, review results including recommended actions or improvements, corrective action plans, summaries of findings, and the accreditation expiration date. Hearing Officer shall submit the information to the System of Care Administrator and the QID Administrator at the time of accreditation, and every new accreditation period thereafter.

13. CREDENTIALING

County and/or its delegated third-party vendor, shall establish and conduct a provider Credentialing Program for credentialing and re-credentialing of Hearing Officer

14. EXCLUSION REPORTING

Hearing Officer shall not knowingly have a relationship with any individual or entity who is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in any of such programs by any federal agency or by any department, agency, or political subdivision of the state.

15. REPORTING UNUSUAL OCCURRENCES

A. Hearing Officer shall comply with KernBHRS policy 11.1.1, Unusual Occurrence Reporting (UOR). Hearing Officer shall utilize the Unusual Occurrence Reporting application referenced in KernBHRS policy 11.1.1. No other variations of reporting will be accepted. Inpatient psychiatric

facilities should continue to report unusual occurrences as outlined by the KernBHRS Crisis Administrator or their designee.

An unusual occurrence is any event or situation that has occurred at a service site or in the field that may have caused, or has the potential to cause, physical or psychological harm to clients who are receiving services from KernBHRS or contracted providers. This definition also applies to visitors (i.e., individuals who are not directly receiving behavioral health services). An unusual occurrence that takes place in any type of work capacity must be reported.

In addition, an Unusual Occurrence report is required when:

1. A client may have injured a staff member, another client, or visitor;
2. A client makes a serious threat to harm another person;
3. There is a suspected violation of professional licensure and/or ethics.
4. There is an unauthorized/inappropriate release of PHI, PI, and/or PII; and/or
5. There is the possibility of threat or legal action and/or negative media attention for the department.

B. Principles: Unusual occurrences shall include but not be limited to:

1. Death other than by suicide;
2. Death by suspected or known suicide;
3. Suicide attempt requiring Emergency Medical Treatment (EMT);
4. Suicide threat with intent or plan;
5. Tarasoff Report, i.e., client makes a threat to harm another person;
6. Aggressive/Threatening or destructive behaviors;
7. Intentional injury (not suicide attempt) requiring EMT;
8. Seclusion, restraint, or emergency manual/chemical containment;
9. Client or visitor in possession of a weapon at the treatment site;
10. Client unintentionally injured another client or visitor at a KernBHRS site or work-related site;
11. Client injured in a vehicular accident during treatment activities;
12. Slip, trips, falls, non-serious accidents not requiring immediate medical attention;
13. Natural disaster, environmental hazard or biohazard exposure while at treatment site;

14. Medication prescription and/or administration errors;
15. Medical health incident requiring immediate/urgent medical attention;
15. Client exposed to communicable disease while at treatment site;
16. Client exposed to infections (BBP, OPIM) while at treatment site;
17. Allegations of neglect, verbal, physical, sexual assault of client/visitor as reported;
18. Client/visitor is a victim of physical, sexual or verbal assault as observed / witnessed by staff;
19. Client/visitor is a perpetrator of physical, sexual, or verbal assault as observed / witnessed by staff;
20. Unauthorized/inappropriate access, use, disclosure or storage of PHI, PI, and/or PII;
21. PHI, PI, and/or PII compromised due to inadequate security measures or theft;
22. Allegations of unethical relationships, behaviors, or other unprofessional conduct or licensure violation by staff;
23. Observation and/or information regarding questionable or inappropriate staff behavior related to client or visitor's care;
24. Possibility or threat of legal action and/or negative media attention;
25. Client at PEC longer than 23:59 hours;
26. AWOL from facility, elopement, or wandering;
27. Unauthorized use and/or possession of legal or illegal substances; and
28. Allegations of client/visitor's property loss as reported.

C. County retains the right to independently investigate unusual occurrences with the cooperation of Hearing Officer.

16. TECHNOLOGY REQUIREMENTS

A. Hearing Officer shall make reports as required by Director, Director's designee, or state regarding Hearing Officer's activities and operations as they relate to Hearing Officer's performance under this agreement.

B. To access the Department's EHR, policies and procedures, and other shared technology services, Hearing Officer shall secure and maintain a Business Class broadband connection. County will provide access to appropriate information via a Virtual Private Network (VPN); software-based VPN connection of sites containing ten (10) or fewer workstation devices; and

hardware-based Site-To-Site VPN connection of sites containing more than ten (10) workstation devices. County will coordinate configuration of VPN connections with Hearing Officer.

C. County may withhold a maximum of ten percent (10%) of any monthly claim for payment, if any data, periodic evaluation data, as described herein, or other information is not submitted by Hearing Officer to KernBHRS within the time limits of submission as prescribed in this agreement or as specified by the Director, or Director's designee, from time to time; or if any ITS data, periodic evaluation data, or other information is incomplete, incorrect, or is not completed in accordance with the requirements of this agreement or as specified by the Director, or Director's designee. The Director or Director's designee shall endeavor to provide as much advance notice of required data as possible, but in no event shall such notice be less than fifteen (15) working days.

17. HIPAA/HITECH COMPLIANCE

Hearing Officer is a Business Associate under the federal [Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 \("HIPAA"\)](#), the [Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 \("the HITECH Act"\)](#), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

19. CONFIDENTIALITY

A. Hearing Officer, in accordance with [Title 45, CFR Regulations, Part 96, Section 96.132\(e\)](#), shall have in effect a system to protect from inappropriate disclosure of patient records maintained by Hearing Officer, in connection with an activity funded under the program involved or by any entity, and such system shall be in compliance with all applicable state and federal laws and regulations, including [42 CFR Part 2, Substance Use Disorder and Treatment records](#). This system shall include provisions for employee education on the confidentiality requirements and the fact that disciplinary action may occur upon inappropriate disclosures.

20. INDEMNIFICATION

A. County shall assume liability for and indemnify and hold Hearing Officer harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Hearing Officer or for which Hearing Officer becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Hearing Officer pursuant to this Agreement.

B. County's obligation under this paragraph shall extend from Hearing Officer's first date of service to County and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Hearing Officer rendered on behalf of County; however, that County shall have no duty or obligation to defend, indemnify, or hold Hearing Officer harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

21. INSURANCE

A. Hearing Officer, in order to protect County and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss, and damage as a result of Hearing Officer's actions in connection with the performance of Hearing Officer's obligations, as

required in this agreement, shall secure and maintain insurance as described below. Hearing Officer shall not perform any work under this agreement until Hearing Officer has obtained all insurance required under this section, and the required certificates of insurance and all required endorsements have been filed with the Department's Contracts Division. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein.

B. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Hearing Officer shall supply proof that such person is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

C. Hearing Officer shall promptly deliver to the Department's Contracts Division certificates of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to Department's Contracts Division prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Hearing Officer shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Hearing Officer or County as an additional insured.

1. Liability Insurance Requirements:

Hearing Officer shall maintain in full force and effect, at all times during the term of this agreement, the following insurance:

a. Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this agreement with the county), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Hearing Officer's performance of work under this agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Hearing Officer shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this agreement. The amount of said insurance coverage required by this agreement shall be the policy limits, which shall be at least **ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate.**

b. Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least **THREE HUNDRED THOUSAND DOLLARS (\$300,000)** for each accident, **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** for each person, and **FIFTY THOUSAND DOLLARS (\$50,000) property damage.**

c. If any of the insurance coverages required under this agreement is written on a claims-made basis, Hearing Officer, at Hearing Officer's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this agreement with coverage extending back to the effective date of this agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. Cancellation of Insurance:

The above-stated insurance coverages required to be maintained by Hearing Officer shall be maintained until the completion of all of Hearing Officer's obligations under this agreement except as otherwise indicated herein. Each insurance policy supplied by the Hearing Officer must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. Hearing Officer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

E. All insurance shall be issued by a company or companies admitted to do business in the State of California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County's Risk Manager.

F. If Hearing Officer is, or becomes during the term of this agreement, self-insured or a member of a self-insurance pool, Hearing Officer shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Hearing Officer is equivalent to the above-required coverages.

G. contributing to all insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the county.

H. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Hearing Officer for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude County from taking such other actions as are available to it under any other provision of this agreement or otherwise in law.

I. Failure by Hearing Officer to maintain all such insurance in effect at all times required by this agreement shall be a material breach of this agreement by Hearing Officer. County, at its sole option, may terminate this agreement and obtain damages from Hearing Officer resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Hearing Officer, County shall deduct from sums due to Hearing Officer any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Hearing Officer pursuant to this agreement is insufficient to reimburse County for the premiums and any associated costs, Hearing Officer agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Hearing Officer of its obligation to obtain and maintain the insurance coverages required by this agreement.

22. REPRESENTATIONS

Hearing Officer makes the following representations, which are agreed to be material to and form a part of the inducement of this agreement:

A. Hearing Officer has the expertise, training, and experience necessary to provide the services described in this agreement; and

B. Hearing Officer does not have any actual or potential interest adverse to County nor does Hearing Officer represent a person or firm with an interest adverse to County with reference to the subject of this agreement; and

23. NON-ASSIGNMENT AND SUBCONTRACTING

Hearing Officer shall not assign, sublet, or transfer this agreement, or any part hereof, nor assign any monies due or that become due to Hearing Officer under this agreement, without the prior written or electronic and express approval of County.

24. NO THIRD-PARTY BENEFICIARIES

It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement, shall be strictly reserved to County and Hearing Officer. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of County and Hearing Officer that any such person or entity, other than County or Hearing Officer, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

25. AUTHORITY TO BIND COUNTY

It is understood that Hearing Officer, in Hearing Officer's performance of any and all duties under this agreement, except as otherwise provided in this agreement, has no authority to bind County to any agreements or undertakings.

26. DISPUTE AND ISSUE RESOLUTION

A. Should a dispute occur concerning Hearing Officer's performance or Hearing Officer's interpretation of specific terms of this agreement, including, but not limited to, the validity of overpayment demands and proposed budget modifications, Hearing Officer shall notify the KernBHRS Administrator of this issue within sixty (60) days of its occurrence. Such notification shall include specific identification of the issue(s) under dispute, Hearing Officer's factual basis for the issue, Hearing Officer's proposed solutions, and the documentary support for the solutions.

27. CHOICE OF LAW AND VENUE

The parties hereto agree that the provisions of this agreement will be construed pursuant to the laws of the state of California. This agreement has been entered into and is to be performed in the County of Kern. Accordingly, the parties agree that the venue of any action relating to this agreement shall be in the County of Kern.

28. NON-WAIVER

No covenant or condition of this agreement can be waived except by the written consent of County. Forbearance or indulgence by County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Hearing Officer. County shall be entitled

to invoke any remedy available to County under this agreement or by law or in equity despite said forbearance or indulgence.

29. ENFORCEMENT OF REMEDIES

No right or remedy herein conferred upon or reserved to County is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder, now or hereafter existing by law or in equity or by statute or otherwise and may be enforced concurrently or from time to time.

30. CAPTIONS AND INTERPRETATION

A. Paragraph headings in this agreement are used solely for convenience and shall be wholly disregarded in the construction of this agreement.

B. No provision of this agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this agreement shall be construed as if jointly prepared by the parties.

31. TIME OF ESSENCE

Time is hereby expressly declared to be of the essence of this agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this agreement.

32. COUNTERPARTS

This agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instruments.

33. NON-COLLUSION COVENANT

Hearing Officer represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this agreement with County. Hearing Officer has not received from County any incentive or special payments, or considerations not related to the provision of services under this agreement.

34. ENTIRE AGREEMENT

This document, including all attachments hereto, contains the entire agreement between the parties relating to the services, rights, obligations, and covenants contained herein and assumed by the parties respectively. No inducements, representations, or promises have been made, other than those recited in this agreement. No oral promise, modification, change, or inducement shall be effective or given any force or effect.

35. NEGATION OF PARTNERSHIP

In the performance of all services under this agreement, Hearing Officer shall be, and acknowledges that Hearing Officer is, in fact and law, an independent Hearing Officer and not an

agent or employee of County. Hearing Officer has and retains the right to exercise full supervision and control of the manner and methods of providing services to County under this agreement. Hearing Officer retains full supervision and control over the employment, direction, compensation, and discharge of all persons assisting Hearing Officer in the provision of services under this agreement. With respect to Hearing Officer's employees, if any, Hearing Officer shall be solely responsible for payment of wages, benefits, and other compensation, compliance with all occupational safety, welfare, and civil rights laws, tax withholding and payment of employee taxes, whether federal, state, or local, and compliance with any and all other laws regulating employment.

36. SEVERABILITY

Should any part, term, portion, or provision of this agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement that the parties intended to enter into in the first instance.

37. TERMINATION

Either party may terminate this agreement in whole, with or without cause, upon thirty (30) days' prior written notice to the other party. In the event of termination of this agreement for any reason, County shall have no further obligation to pay for any services rendered or expenses incurred by Hearing Officer after the effective date of the termination, and Hearing Officer shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination. Should DHCS or any other oversight agency or KernBHRS determine that the delivery of service is unsatisfactory, KernBHRS may terminate the agreement in part or in whole.

38. IMMEDIATE TERMINATION

Notwithstanding the foregoing, County shall have the right to terminate this agreement effective immediately after giving written notice to Hearing Officer in the event County determines that Hearing Officer does not have the proper credentials, experience, or skill to perform the required services under this agreement; or in the event that continuation by Hearing Officer in the providing of services may result **(i)** in civil, criminal, or monetary penalties against County, **(ii)** in the breach of any federal or state or regulatory rule or regulation or condition of accreditation or certification, or **(iii)** in the loss or threatened loss of County's ability to participate in any federal or state health care program, including Medicare or Medi-Cal.

39. REQUIRED DOCUMENTS

A. Agreements That Are Renewed Annually: Hearing Officer shall submit all required documents to the Contract Monitoring Unit before KernBHRS sends the contract to the Board of Supervisors or County Purchasing Manager to be executed. Required documents include but are not limited to: Pre-Award Risk Assessment, Disclosure of Ownership Form, and Telehealth Attestations.

B. Multi-Year Agreements: Hearing Officer shall submit all required documents to the Contract Monitoring Team on or before March 1, 2023. Failure to submit the required documents in a

timely manner shall be deemed a material breach of this agreement and may result in termination of the agreement.

40. SIGNATURE AUTHORITY

Each party has full power and authority to enter into and perform this agreement, and the person signing this agreement on behalf of each party has been properly authorized and empowered to enter into this agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS TO WHICH, each party to this Agreement has signed this Agreement upon the date indicated, and agrees for itself, its employees, officers, partners, and successors, to be fully bound by all terms and conditions of this Agreement.

APPROVED AS TO CONTENT:
Behavioral Health and Recovery Services

By: _____
Alison Burrowes, MA LCSW
Director

COUNTY OF KERN
Board of Supervisors

By: _____
Chairman

APPROVED AS TO FORM:
Office of the County Counsel

By: _____
Kyle Holemes
Deputy

HEARING OFFICER

By: _____
"Hearing Officer"

EXCERPTS OF CONTRACT EXHIBITS

AGREEMENT FOR PROFESSIONAL SERVICES

(COUNTY OF KERN – CONTRACTOR NAME)

(CERTIFICATION REVIEW HEARING OFFICER SERVICES)

Applicable Contract Exhibits will be discussed and added to the contract during contract negotiations. Sample Exhibit in your negotiated contract may include:

I. ADDITIONAL ADMINISTRATIVE AND ETHICAL REQUIREMENTS

Hearing Officers shall provide to County on the due date provide by BHRS:

1) Credentials: Copies of appropriate credentials and licenses required to perform the scope of work as delineated in Exhibit “A” entitled “**DESCRIPTION AND STANDARDS OF SERVICES**”.

2) Insurance: Certificates of adequate and appropriate insurance as required in the paragraph entitled “**INSURANCE**” of this Agreement.

3) Performance: Written notification within three (3) days of any event, occurrence, or circumstance that will prevent, delay, or otherwise interfere with Hearing Officer’s performance under this Agreement including items of a financial or health nature.

II. BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM (“Addendum”) supplements and is made a part of the agreement (“agreement”) by and between the County of Kern (“Covered Entity” or “CE”) and _____ (“Business Associate” or “BA”). This Addendum is effective as of date first written above (the “Addendum Effective Date”).

RECITALS:

A. CE wishes to disclose certain information to BA pursuant to the terms of the agreement, some of which may constitute Protected Health Information (“PHI”), Personal Information (“PI”), or Personally Identifiable Information (“PII”) (defined below). For the purpose of this Exhibit, PHI, PI, and PII all refer to confidential information that must be protected.

B. 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 the Health Insurance Portability and Accountability Act of 1996, [Public Law 104-191 \(“HIPAA”\)](#), the Health Information Technology for Economic and Clinical Health Act, [Public Law 111-005 \(“the HITECH Act”\)](#), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

III. PRIVACY AND INFORMATION SECURITY PROVISIONS

This Exhibit is intended to protect the privacy and security of specified Kern Behavioral Health and Recovery Services (County) information that Hearing Officer may access, receive, or transmit under this agreement. County information covered under this Exhibit consists of: (1) Protected Health Information (PHI) as defined under the [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\), Public Law 104-191](#); (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at [California Civil Code Section 1798.3](#); Personal Information may include data provided to the Department by the Social Security Administration; and (3) Personally Identifiable Information (PII); however, to the extent that data is PHI or ePHI and PI or PII, this Exhibit shall apply.

I. Recitals.

A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which defines Protected Health Information (PHI), County is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII) it maintains. These include:

1. The [California Information Practices Act of 1977 \(California Civil Code §§ 1798 et seq.\)](#).
2. The Agreement between the Social Security Administration (SSA) and the Department of Health Care Services (DHCS), known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPS) between the SSA and the California Health and Human Services Agency.
3. [Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2](#).
4. [California Welfare and Institutions Code § 5328 et seq.](#)

B. The terms used in this Exhibit but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and agreement. Any reference to statutory, regulatory, or contractual language shall be to such language as in effect or as amended.

C. For the purpose of this Exhibit, PHI, PI, and PII all refer to confidential information that must be protected.

IV. PROGRAM INTEGRITY REQUIREMENTS

1. GENERAL REQUIREMENTS

As a condition for receiving payment under a Medi-Cal managed care program, Hearing Officer shall comply with the provisions of [42 CFR §§ 438.602, 438.608, 438.610, 455.1\(a\)1, 455.104-455.106, 455.434](#); [Social Security Act §§ 1128, 1156](#), and [1842\(j\)\(2\)](#).

2. EXCLUDED PROVIDERS

Hearing Officer shall not knowingly have a relationship with any individual or entity that is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in any of such programs by any federal agency or by any department, agency or political subdivision of the state. For purposes of this paragraph, "principal" means an officer, director, owner of any portion of the entity, partner, key employee, subcontractor, or other person with primary management or supervisory responsibilities, or a person who has a critical influence or substantive control over Hearing Officer's operations. Hearing Officer shall be required to submit a Disclosure of Ownership and Control Interest Statement during the initial contracting, re-contracting and/or recredentialing process or upon request by County.

3. SERVICE VERIFICATION.

Pursuant to [42 C.F.R. § 438.608\(a\)\(5\)](#), Hearing Officer shall implement and maintain arrangements or procedures designed to detect and prevent fraud, waste, and abuse that include provisions to verify, by sampling or other methods, whether services that have been represented to have been delivered, were received by beneficiaries, and the application of such verification processes on a regular basis.

4. DISCLOSURES OWNERSHIP CONTROL INTEREST STATEMENT

A. Hearing Officer agrees to furnish County with the names of its officers, owners, stockholders owning more than five percent (5%) of its stock, and major creditors holding more than five percent (5%) of the debt of Hearing Officer. This information shall become public record on file with the U.S. Department of Health and Human Services.

V. CREDENTIALING AND RE-CREDENTIALING REQUIREMENTS

KernBHRS will establish and conduct a provider Credentialing Program for credentialing and re-credentialing Hearing Officer's network treatment providers. Hearing Officer shall agree to comply with the terms set forth herein.

Hearing Officer shall adhere to the California Department of Health Care Services' (DHCS) statewide uniform provider credentialing and re-credentialing requirements, established pursuant to [Title 42 of the Code of Federal Regulations, Part 438.214](#).

KernBHRS will ensure that Hearing Officer and its employees, agents, or subcontractors are qualified in accordance with current legal, professional, and technical standards, and are appropriately licensed, registered, waived, and/or certified.

[END OF EXCERPT OF SAMPLE AGREEMENT]

F. KERN COUNTY ADMINISTRATIVE BULLETIN

EXHIBIT C - FREE SPEECH POLICY

Kern County Administrative Bulletin



ADMINISTRATIVE BULLETIN NO. 19

Issued: January 23, 2024

SUBJECT: FREE SPEECH POLICY

Purpose

The purpose of this Free Speech Policy is to inform all employees, employment applicants, and contractors of their constitutional rights to free speech, to petition the government for redress of grievances, to instruct representatives, and to freely associate and assemble. Unlawful discrimination based on the exercise of these rights is unacceptable and incompatible with the County's standards, as well as being a violation of the law. This Free Speech Policy also establishes the complaint and investigation procedure for alleged violations of these rights.

First Amendment Rights

Every County employee, employment applicant, and contractor has a constitutional right to free speech, to petition the government for redress of grievances, to instruct representatives, and to freely associate and assemble. ¹ For simplicity, this policy shall refer to such rights as "First Amendment Rights."

Every County employee, employment applicant, and contractor shall be free from any unlawful discrimination or retaliation by the County of Kern for exercising their First Amendment Rights while employed, while seeking employment, or while doing or seeking to do business for or with the County.

Free Speech Policy

The County of Kern remains committed to creating a professional environment in which the First Amendment Rights of all County employees, employment applicants, and contractors are protected.

It is a violation of the Constitutions of the United States and California for the County to unlawfully discriminate against County employees, employment applicants, or contractors because they exercised their First Amendment Rights.

Every County employee, and other person acting on behalf of the County, including members of the Board of Supervisors, is prohibited from unlawfully discriminating against, harassing, or retaliating against an employee, employment applicant, or contractor because the employee, employment applicant, or contractor exercised their First Amendment Rights, or because they filed a complaint or participated in an investigation under this Free Speech Policy.

¹ California Constitution, article I, sections 2(a) and 3(a); U.S. Constitution, amend. I.

All County employees and other persons acting on behalf of the County, including members of the Board of Supervisors, shall uphold and abide by this Free Speech Policy by cooperating fully in any investigation of a complaint of unlawful discrimination, harassment, or retaliation under this Free Speech Policy.

Persons in positions of authority, including managers and supervisors, shall act immediately on potential violations of this Free Speech Policy. They are responsible for knowing and enforcing this Policy and creating and maintaining a workplace free of discrimination, harassment, and retaliation, and should address potential problems before they become serious.

This Free Speech Policy applies at every level of the County and to every aspect of the workplace environment, including but not limited to, County events that occur outside of the physical workplace.

This Free Speech Policy shall be posted on the Kem County websites and in designated physical locations, and shall be attached to all County-issued Requests for Proposals (RFPs) and other solicitations for contract or grant proposals, County contracting forms and templates, and relevant notices to employees, employment applicants, and contractors.

Examples of unlawful discrimination:

- A department head recommends that a contract not be renewed because the contractor is politically active, regardless of their political position.
- A supervisor declines to recommend a supervisee for a promotion, or assigns a supervisee to less favorable job duties or to a less favorable location, because of the supervisee's union activity.
- A manager gives a supervisee poor job evaluations because the manager does not agree with their supervisee's political views.
- A county decision-maker declines to award a contract to provide social services to a particular community based organization because that organization actively campaigns for a particular bill or social movement.
- A county decision maker stops communicating with a potential contractor about a contract because the contractor has threatened to file lawsuit against the County in an unrelated case.

The California and U.S. Constitutions also provide specific First Amendment protection for County elected officials and other persons acting on behalf of the County, including volunteers and interns. This policy does not address such persons' rights.

Complaint and Investigation Procedure

Each employee, employment applicant, or contractor who believes that they have experienced unlawful discrimination or harassment described in this Policy may file a written complaint setting forth the specific facts and evidence supporting the complaint with the County Complaint Coordinator (see below). Such complaints shall be promptly forwarded to the Free Speech Retained Expert (see below). The complainant shall provide all documentary evidence, names of potential witnesses, and any other information believed by the complainant to be relevant to the complaint.

The County Complaint Coordinator shall initiate a formal investigation of the allegations in the complaint, interview all witnesses to the incident giving rise to the complaint (including the complainant and the

person(s) against whom the complaint is directed), and issue written findings as to the merits of the complaint and the remedies that should be implemented to resolve the complaint under existing County ordinances, policies, and procedures. The County Complaint Coordinator shall have a period of not more than 75 business days from receipt of the complaint to conduct the investigation and to issue appropriate draft findings and recommended remedies. The 75-day time period may be extended due to the unavailability of a material witness, or with the written agreement of the complainant.

The County Complaint Coordinator shall provide the draft findings and recommended remedies to the Free Speech Retained Expert for review and approval. The County Complaint Coordinator shall also provide the Free Speech Retained Expert with a copy of the complaint, all information and documentary evidence provided by the complainant, all witness interview materials and documents provided by witnesses, and all information and documentary evidence developed by the County Complaint Coordinator in conducting the investigation.

In the event that the Free Speech Retained Expert does not approve the County Complaint Coordinator's draft findings and recommended remedies, the Free Speech Retained Expert shall prepare a written explanation of the reasons for non-approval. The Free Speech Retained Expert and County Complaint Coordinator shall meet and confer to resolve any disagreement or deficiencies, and both parties shall state their positions in writing. The County Complaint Coordinator shall then take all necessary steps to correct any deficiencies and re-submit the draft findings and recommended remedies to the Free Speech Retained Expert for review and approval.

In the case of any complaints in which there is an appearance of bias, conflict of interest, or insufficient independence with regard to the handling of the complaint by the County Complaint Coordinator, the Backup Complaint Coordinator (see below) shall conduct the investigation, and the Free Speech Retained Expert shall review and approve in the same manner as any investigation conducted by the County Complaint Coordinator.

The Free Speech Retained Expert shall conduct the investigation if both the Complaint Coordinator and the Backup Complaint Coordinator are conflicted. The County shall implement the Free Speech Retained Expert's findings and remedies.

Department heads shall be responsible for ensuring that all new employees and contract staff in their department receive a copy of this policy and sign an acknowledgment which shall be retained in the employee's personnel file (or a similar file for contract staff). In addition, department heads shall ensure that, on an annual basis, each employee in their department receives a copy of this policy and that an acknowledgment of receipt is contained in each employee's personnel file.

Department heads may establish departmental policies and internal complaint procedures provided that those policies and procedures are consistent with this Policy. Nothing in this Policy shall abrogate any legal evidentiary standards in a court of law.

Complaints Within the Scope of Civil Service Commission Rule 1810.00, et seq.

The Kem County Rules of the Civil Service Commission ("Civil Service Rules") provide a voluntary complaint procedure for some complaints that fall within the scope of this Policy. These Civil Service Rules apply to civil service employees or applicants for civil service employment complaining of unlawful discrimination, harassment, or retaliation based on religious, union, or political affiliation, or due to their participation in a government investigation.

A complainant whose complaint falls within the scope of both the Civil Service Rules and this Policy may choose to file their complaint using the procedure described in the Civil Service Rules, commencing at section 1820.00, or using the procedure otherwise described in this Policy, but not

both. If a complainant invokes both procedures for the same complaint, the complainant shall be required to make a written election of which procedure they wish to have apply.

The Free Speech Retained Expert will review all such complaints consistent with the time limitations, procedure, and appellate rights set forth in Civil Service Rule 1820.00. The Free Speech Retained Expert will review and approve findings of fact and recommended remedies issued by the Equal Employment Opportunity Officer.

Under Civil Service Rule 1830.00-1830.02, either the complainant or the County may request a hearing before the Civil Service Commission. The Free Speech Retained Expert does not review the Civil Service Commission's decision for approval but will provide a report to the County and complainant regarding any comments, concerns, or recommendations related to the Commission's final decision, within 60-120 days of that decision.

County Complaint Coordinator: Sarah Gutierrez, Director of Diversity, Equity and Inclusion; (661) 868-3919; gutierrezsa@kerncounty.com

Backup County Complaint Coordinator: Mercedes Perez, Senior Human Resources Specialist; (661) 868-3915; perezmer@kerncounty.com

Free Speech Retained Expert:
Barry McDonald, (310) 506-4668; barry.mcdonald@pepperdine.edu
Apm/AB/AB-19_01-23-2024

By my signature below, I acknowledge that I have received and reviewed this Free Speech Policy (AB19) and I understand that a copy will be placed into my personnel file.

Printed Name

Employee Signature

Date

[END OF RFA FOR CERTIFICATION REVIEW HEARING OFFICERS SERVICES]