COUNTY OF LOS ANGELES

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BOARD OF SUPERVISORS
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DEPARTMENT OF MENTAL HEALTH

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June 17, 2004

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

78 JUN 29 2004

Violet Varona-Lukens
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

APPROVAL OF AMENDMENTS TO EXTEND THREE DEPARTMENT OF MENTAL HEALTH LEGAL ENTITY AGREEMENTS WHICH INCLUDE PROPOSITION A MENTAL HEALTH SERVICES WITH ENKI HEALTH AND RESEARCH SYSTEMS, PACIFIC CLINICS, AND SPECIAL SERVICE FOR GROUPS FOR FISCAL YEARS 2004-2005 AND 2005-2006 (SUPERVISORIAL DISTRICTS 1 AND 5) (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Director of Mental Health or his designee to prepare, sign, and execute Amendments to three (3) existing Department of Mental Health (DMH) Legal Entity (LE) Agreements, which include Proposition A (Prop A) mental health services with ENKI Health and Research Systems (ENKI), Pacific Clinics, and Special Service for Groups (SSG), listed in Attachment I and substantially similar in format to Attachment II. The Amendments will extend the term and conditions of the existing LE Agreements for a maximum of two (2) fiscal years, for a total term of the original LE Agreements not to exceed a period of five (5) years. Upon Board approval, the first-year extension of each Agreement will commence on July 1, 2004, and will continue in effect through June 30, 2005; the second-year extension will commence on July 1, 2005, and will continue in effect through June 30, 2006.

   The aggregate Maximum Contract Amounts (MCA) for the three (3) LE Agreements, as detailed in Attachment I, will be $80,589,197 for each Fiscal Year (FY) 2004-2005 and 2005-2006. It is anticipated that the MCAs for FYs 2004-2005 and 2005-2006 may change due to pending budgetary factors, which

may impact the funding that is given to the County by the State and/or Federal Government on an annual basis. These agreements permit the County to reduce the MCAs or terminate the agreements, whichever is applicable, under the terms of the agreements, if, as a result of the adoption of the County budget, funding for the agreements is reduced.

The extension of the three (3) LE Agreements will allow for continuous, uninterrupted services to severely and persistently mentally ill adults and seriously emotionally disturbed (SED) children, adolescents, and their families who reside throughout the County of Los Angeles.

2. Delegate authority to the Director of Mental Health or his designee to prepare, sign, and execute future amendments to these three (3) LE Agreements and establish as a new MCA the aggregate of each original Agreement and all Amendments, provided that: 1) the County's total payments to contractor under each Agreement for each fiscal year shall not exceed an increase of 20 percent from the applicable revised MCA; 2) any such increase shall be used to provide additional services or to reflect program and/or policy changes; 3) the Board of Supervisors has appropriated sufficient funds for all changes; 4) approval of County Counsel and the Chief Administrative Officer (CAO) or their designees is obtained prior to any such Amendment; 5) the Amendments which reduce programs or services are consistent with the principles agreed to in DMH's stakeholder process and FY 2004-2005 Adopted Budget and reflect DMH's final FY 2004-2005 Budget approved by your Board; and 6) the Director of Mental Health shall notify the Board of Supervisors of Agreement changes in writing within 30 days after execution of each Amendment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

Board approval of contract extensions for ENKI, Pacific Clinics, and SSG is requested to support DMH's goal of a five-year term as originally intended during the FY 2001-2002 Prop A bidders' conference. In addition, Board approval is requested due to the June 30, 2004 expiration of each LE Agreement. The Auditor-Controller and County Counsel have agreed to a two-year extension of the soon to expire three-year Prop A Agreements, provided that a cost analysis is performed with positive results and such contracted funds are budgeted by DMH for FYs 2004-2005 and 2005-2006.

Prop A Cost Analysis

DMH conducted a cost analysis with positive results for each of the three (3) Prop A mental health programs and found that each program can be performed more economically by an independent contractor than by County employees.

The extension of the three (3) LE Agreements for two (2) additional fiscal years, FYs 2004-2005 and 2005-2006, will allow for continuous, uninterrupted services to severely and persistently mentally ill adults, SED children, adolescents, and their families who reside throughout the County of Los Angeles.

Implementation of Strategic Plan Goals

The recommended Board actions are consistent with the County's Programmatic Goal No. 1, "Service Excellence," within the Countywide Strategic Plan. The extension of these LE Agreements will provide the public with access to a continuum of mental health services that are both beneficial and responsive.

FISCAL IMPACT/FINANCING

There is no increase in net County cost. The MCAs totaling $80,589,197, as detailed in Attachment I, are included in DMH's FY 2004-2005 Final Changes Budget. The amount for FY 2005-2006 will be requested during DMH's annual budget process.

It is anticipated that the MCAs for FYs 2004-2005 and 2005-2006 may change due to pending budgetary factors, which may impact the funding that is given to the County by the State and/or Federal Government on an annual basis. These agreements permit the County to reduce the MCAs or terminate the agreements, whichever is applicable, under the terms of the agreements, if, as a result of the adoption of the County budget, funding for the agreements is reduced.

ENKI

The MCA for FY 2004-2005 is $21,327,908 which includes $19,478,874 for the non-Prop A mental health services programs operated by ENKI and $1,849,034 for the Prop A portion of the LE Agreement. The MCA will be fully funded as follows:

1) County General Fund (CGF)/Realignment Total: $7,377,220
2) Intra Fund Transfer (IFT)/State/Federal/Grant/Categorical Total: $3,127,284
3) Federal Financial Participation (FFP): $7,347,780

4) Early Periodic, Screening, Diagnosis and Treatment-State General Funds (EPSDT-SGF): $3,257,900
5) SB 90 (AB 3632)-SGF: $217,724

Pacific Clinics

The MCA for FY 2004-2005 is $47,475,785 which includes $45,389,719 for the non-Prop A mental health services programs operated by Pacific Clinics and $2,086,066 for the Prop A portion of the LE Agreement. The MCA will be fully funded as follows:

1) CGF/Realignment Total: $12,488,546
2) IFT/State/Federal/Grant/Categorical Total: $4,193,592
3) FFP: $19,918,818
4) EPSDT-SGF: $10,349,000
5) SB 90 (AB 3632)-SGF: $525,829

SSG

The MCA for FY 2004-2005 is $11,785,504 which includes $8,830,502 for the non-Prop A mental health services programs operated by SSG and $2,955,002 for the Prop A portion of the LE Agreement. The MCA will be fully funded as follows:

1) CGF/Realignment Total: $4,335,194
2) IFT/State/Federal/Grant/Categorical Total: $871,482
3) FFP: $4,592,772
4) EPSDT-SGF: $1,963,400
5) SB 90 (AB 3632)-SGF: $22,656

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The three (3) contractors -- ENKI, Pacific Clinics, and SSG -- presently provide non-Prop A and Prop A mental health services at their respective sites. ENKI was awarded its first Prop A contract in 1988 for services at La Puente Mental Health Center and has continuously provided these services since then. Pacific Clinics was awarded its first Prop A contract in 1991 for services at El Camino Mental Health Center and has continuously provided these services since then. SSG was awarded its first Prop A contract in 1989 for services at the Asian Pacific Counseling and Treatment Center and has continuously provided these services since then.

No layoffs or reductions in County work force or other adverse impacts on employee relations will result from the Prop A contract extensions as mental health services are presently contracted out.

ENKI is a non-profit corporation that complies with County Code Chapter 2.201, "Living Wage Program," by providing an employee health plan and paying an hourly wage of not less than $8.32 plus benefits. Pacific Clinics and SSG are exempt from the Living Wage Program because they are non-profit corporations qualified under Internal Revenue Code Section 501 (c) (3).

All three contractors have signed the Living Wage Program and Contractor Non-Responsibility Debarment form attesting to Living Wage Program compliance. The contractors have complied with the labor violations reporting requirements.

These LE Agreements meet all the mandatory requirements of the County Code Section 2.121.380, et. seq., "Contracting with Private Business," for the following reasons:

1) The Prop A provisions of each of the LE Agreements remain cost effective as determined by DMH.

2) The Prop A provisions of each of the LE Agreements will not impair the County's ability to respond to emergencies. The extension of the LE Agreements will not result in the unauthorized disclosure of confidential information.

3) Alternative services will continue to be available in the event of a default by the contractors, therefore, services will not be interrupted.

4) The extension of the LE Agreements will not infringe upon the proper role of the County in its relationship to its citizens.

5) The LE Agreements will continue to remain in full compliance with all applicable Federal and State regulations.

6) Contract monitoring functions will continue to be performed by DMH's Bureau of Standards, Practices, and Conduct Program staff.

The LE Agreements contain termination clauses so that after the County budget is adopted, if there are any funding reductions to these contract agencies, the County can reduce or terminate the LE Agreements.

The LE Agreements also contain standard provisions regarding contractor responsibility and debarment. The three contractors have also certified that they have complied with

and will comply with the following: 1) HIPAA Agreements pertaining to Electronic Data Interchange/Direct Data Entry (EDI/DDE) selection, and general requirements and Trading Partner Agent (TPA) authorization; 2) Preamble for all County Health and Human Services contracts; and 3) notification requirements when expenditures total 75 percent of the MCA and when the term of the Agreement is within six (6) months of expiration.

Upon Board approval, the first-year extension of each LE Agreement will commence on July 1, 2004, and will continue in effect through June 30, 2005; the second-year extension will commence on July 1, 2005 and will continue in effect through June 30, 2006.

The Amendment has been approved as to form by County Counsel. In addition, the proposed actions have been reviewed by the CAO and DMH's Fiscal and Program Administrations.

CONTRACTING PROCESS

DMH has based its recommendations for contract extensions on the availability of funding, positive findings in DMH's cost analysis for each of the Prop A mental health services programs, and knowledge that the contractors are in good standing.

After a November 1, 2000 bidders' conference, and DMH's release of three (3) Request for Proposals (RFPs) for the re-solicitation of three (3) Prop A contracts, your Board approved the award of the LE Agreements on June 19, 2001, which included Prop A mental health services with ENKI, Pacific Clinics, and SSG. These agencies were selected for contract awards based on program utilization, cost effectiveness, and other criteria set forth in the RFPs. The term of the LE Agreements commenced on July 1, 2001 through June 30, 2002, with provisions for two (2) automatic renewals. With this recommended action of a two-year extension, the total term of each Agreement will be five (5) years.

IMPACT ON CURRENT SERVICES

The extension of the three (3) LE Agreements for FYs 2004-2005 and 2005-2006 will allow for continuous, uninterrupted services to severely and persistently mentally ill adults, SED children, adolescents, and their families who reside throughout the County of Los Angeles.

CONCLUSION

The Department of Mental Health will need one (1) copy of the adopted Board's action. It is requested that the Executive Officer of the Board notifies the Department of Mental Health's Contracts Development and Administration Division at (213) 738-4684 when this document is available.

Respectfully submitted,

C. Fullmore for M.J. Southard

Marvin J. Southard, D.S.W.
Director of Mental Health

MJS:MY:RK:LQ:fm

Attachments (2)

c: Chief Administrative Officer
County Counsel
Chairperson, Mental Health Commission

COUNTY OF LOS ANGELES -- DEPARTMENT OF MENTAL HEALTH
Contracts Development and Administration Division

ATTACHMENT I

EXTENSION OF LEGAL ENTITY AGREEMENTS FOR FYs 2004-2005 AND 2005-2006

ITEM No.	CONTRACTOR LEGAL ENTITY (LE) #	SUP. DIST.	Reimbursement Method Format & Present Contract #	Type of Service Exhibit	Agreement Extension Term	Fiscal Year Maximum Contract Amount	
						FY 2004-2005	FY 2005-2006
1	ENKI Health and Research Systems, Inc. 150 E. Olive Avenue, Suite 203 Burbank, CA 91502 Al Urmer, Ph.D. President LEGAL ENTITY (LE) #00188	5	NR/CR DMH-01511	104A,308A,309A 310A,311A,402 403,404A 802A,804A,1001 1006,1010	2 Years	$21,327,908	$21,327,908
2	Pacific Clinics 800 S. Santa Anita Avenue Arcadia, CA 91006 Susan Mandel, Ph.D. President and CEO LEGAL ENTITY (LE) #00203	5	NR/CR DMH-01533	104A,308A,309A 310A,311A,402 403,404A,406A 501A,701A 802A,921,1001 1006,1010	2 Years	$47,475,785	$47,475,785
3	Special Service for Groups 605 W. Olympic Blvd., Suite 600 Los Angeles, CA 90015 Herbert Hatanaka, D.S.W. Executive Director LEGAL ENTITY (LE) #00214	1	NR/CR DMH-01541	104A,308A,309A 402,403,404A 405,501A 602,801,802A 1001,1005 1010	2 Years	$11,785,504	$11,785,504
					Total Maximum Contract Amount:	* $ 80,589,197	* $ 80,589,197

* The MCA's for FYs 2004-2005 and 2005-2006 may change due to pending budgetary factors, which may impact funding that is given to the County by the State and/or Federal Government on an annual basis.

ATTACHMENT II

CONTRACT NO._____

AMENDMENT NO._____

THIS AMENDMENT is made and entered into this _____ day of _____, 2004, by and between the COUNTY OF LOS ANGELES (hereafter "County") and ___ _____ (hereafter "Contractor").

WHEREAS, County and Contractor have entered into a written Agreement, dated June 17, 2003, identified as County Agreement No. DMH-_____, and any subsequent amendments (hereafter collectively "Agreement"); and

WHEREAS, County and Contractor intend to amend Agreement only as described hereunder; and

WHEREAS, the Director of Mental Health or his designee has delegated authority from the Board of Supervisors to extend the term and conditions of the Agreement to a maximum of two fiscal years, effective July 1, 2004 through June 30, 2006, for a total term of the original Agreement not to exceed a period of five years; and

WHEREAS, upon Board approval, the first-year extension shall commence on July 1, 2004 through June 30, 2005, and the second-year extension shall commence on July 1, 2005 through June 30, 2006; and

WHEREAS, for Fiscal Years 2004-2005 and 2005-2006, County and Contractor intend to amend Agreement to add contract language to Paragraph 4 (Financial Provisions) in regards to the following: 1) No Payment for Services Provided Following Expiration/Termination of Contract; 2); Cash Flow Advance (CFA) In Expectation of Services/Activities To Be Rendered - No CFA to Non-Certified Medi-Cal Eligible

Provider; 3) Healthy Families; 4) Supportive and Therapeutic Options Program (STOP) Funds; and 5) General Relief Opportunities for Work (GROW) Reimbursement; and

WHEREAS, for Fiscal Years 2004-2005 and 2005-2006, County and Contractor intend to amend Agreement to include revised paragraphs regarding the following: 1) Child Support Compliance Program; 2) Contractor Responsibility and Debarment: 3) Contractor's Exclusion from Participation in a Federally Funded Program; 4) Health Insurance Portability and Accountability Act (HIPAA); and 5) Compliance with the County's Living Wage Program; and

WHEREAS, for Fiscal Years 2004-2005 and 2005-2006, the Maximum Contract Amounts will be $_____ and $_____, respectively.

NOW, THEREFORE, County and Contractor agree that Agreement shall be amended only as follows:

1. Paragraph I (TERM), Subparagraph B (Automatic Renewal Period) shall be deleted in its entirety and the following substituted therefor:

"B. Automatic Renewal Periods: After the Initial Period, this Agreement shall be automatically renewed two additional periods without further action by the parties hereto unless either party desires to terminate this Agreement at the end of either the Initial Period or First Automatic Renewal Period and gives written notice to the other party not less than thirty days prior to the end of the Initial Period or at the end of the First Automatic Renewal Period, as applicable.

(1) First Automatic Renewal Period: If this Agreement is automatically renewed, the First Automatic Renewal Period shall commence on July 1, 2004, and shall continue in full force and effect through June 30, 2005.

(2) Second Automatic Renewal Period: If this Agreement is automatically renewed, the Second Automatic Renewal Period shall commence on July 1, 2005 and shall continue in full force and effect through June 30, 2006."

2. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph C (Reimbursement If Agreement Is Automatically Renewed) shall be deleted in its entirety and the following substituted therefor:

"C. (1) Reimbursement For First Automatic Renewal Period: The Maximum Contract Amount for the First Automatic Renewal Period of this Agreement as described in Paragraph 1 (TERM) shall not exceed _____ _____ DOLLARS ($_____), and shall consist of County, State, and/or Federal funds as shown on the Financial Summary. This Maximum Contract Amount includes Cash Flow Advance which is repayable through cash and/or appropriate SFC units and/or actual and allowable costs as authorized by other provisions of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall County pay Contractor more than this Maximum Contract Amount for Contractor's performance hereunder during the First Automatic Renewal Period. Furthermore, Contractor shall inform County when up to seventy-five percent (75%) of the Maximum Contract Amount has been incurred. Contractor shall send such notice to those persons and addresses which are set forth in Paragraph 57 (NOTICES).

(2) Reimbursement For Second Automatic Renewal Period: The Maximum Contract Amount for the Second Automatic Renewal Period of this Agreement as described in Paragraph 1 (TERM) shall not exceed _____

_____ DOLLARS ($_____), and shall consist of County, State, and/or Federal funds as shown on the Financial Summary. This Maximum Contract Amount includes Cash Flow Advance which is repayable through cash and/or appropriate SFC units and/or actual and allowable costs as authorized by other provisions of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall County pay Contractor more than this Maximum Contract Amount for Contractor's performance hereunder during the Second Automatic Renewal Period. Furthermore, Contractor shall inform County when up to seventy-five percent (75%) of the Maximum Contract Amount has been incurred. Contractor shall send such notice to those persons and addresses which are set forth in Paragraph 57 (NOTICES)."

3. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph J (11) (No Payment for Services Provided Following Expiration/Termination of Contract) shall be added to the Agreement:

"J. (11) NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION/TERMINATION OF CONTRACT: Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment, it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such

payment from Contractor. This provision shall survive the expiration or other termination of this Contract."

4. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph K (Cash Flow Advance in Expectation Of Services/Activities To Be Rendered) shall be added to the Agreement:

"K. (14) CASH FLOW ADVANCE IN EXPECTATION OF SERVICES/ACTIVITIES TO BE RENDERED: No Cash Flow Advance will be given if a Contractor has not been certified as an eligible Medi-Cal service provider."

5. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph BB (Healthy Families) shall be added to the Agreement:

"BB. Healthy Families:

(1) Healthy Families Reimbursement:

(a) Title XXI Healthy Families funds shall be paid to Contractor only for State approved claims for Title XXI Healthy Families services and only to the extent that 1) the Contractor has complied with Federal and State laws, regulation, manuals, guidelines, and directives, 2) eligible FFP matching funds are available under this Agreement, and only after County has received FFP payment from the State.

(b) Reimbursement to the Contractor for services to Serious Emotionally Disturbed (SED) HFPM will be existing rates for existing mental health services under this Agreement.

(c) Under no circumstances shall Contractor be reimbursed for the provision of services to HFPM from any Cash Flow Advance funds.

(2) Healthy Families Suspension of Payments: At the sole discretion of Director, payments to Contractor under this Agreement shall be suspended if

Director determines that Contractor is in default under any of the provisions of this Agreement, or if the State fails to make prompt payment as determined by Director on County's claims to State.

6. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph CC (Supportive and Therapeutic Options Programs [STOP] Funds) shall be added to the Agreement:

"CC. SUPPORTIVE AND THERAPEUTIC OPTIONS PROGRAM (STOP) Funds: STOP funds may not be used as local match for any State or Federal programs. Notwithstanding any other provision of this Agreement, in the event that Contractor provides STOP services reimbursable under the State's STOP claim process, Contractor shall be paid by County from STOP funds upon receipt from the State. In the event that STOP funds are not available to pay STOP claims or that State denies any or all of the STOP claims submitted by County on behalf of Contractor, Contractor understands and agrees that County is not responsible for any substantive payment obligation and, accordingly, Contractor shall not seek any payment from County and shall indemnify and hold harmless County for any and all liability for payment of any or all of the denied STOP claims or for the unavailability of STOP funds to pay for STOP claims.

Contractor shall be solely liable and responsible for all data and information submitted by Contractor to County in support of all claims for STOP funds submitted by County as the fiscal intermediary."

7. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph DD (General Relief Opportunities for Work (GROW) Reimbursement) shall be added to the Agreement:

"DD. GENERAL RELIEF OPPORTUNITIES FOR WORK (GROW) REIMBURSEMENT:

(1) Reimbursement at cost of existing services under this Agreement shall be considered payment in full, subject to third party liability and beneficiary share of costs, for the GROW beneficiaries.

(2) Under no circumstances shall Contractor be reimbursed for the provision of GROW services from any funds included in the Cash Flow Loan Exhibit(s).

(3) DMH shall have the option to deny payment for services when documentation of clinical work does not meet minimum State and County standards as set forth in the Los Angeles County annotated version of the Rehabilitation Option and Targeted Case Management Manual.

(4) Reimbursement shall only be made for GROW services to the extent that funds are allocated by the Department of Public Social Services (DPSS).

(5) Services to GROW beneficiaries shall be limited to Contractor's existing services as provided in this Agreement."

8. Paragraph 48 (Child Support Compliance Program) shall be deleted in its entirety and the following substituted therefor:

"48. CHILD SUPPORT COMPLIANCE PROGRAM:

A. Contractor's Warranty of Adherence to County's Child Support Compliance Program:

(1) Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through

contract are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

(2) As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor's duty under this contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall during the term of this contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholdings Orders or CSSD Notices of Wage and Earnings Assignment for Child, Family, or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

B. Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program: Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 48A (CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM) shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure such default within 90 calendar days of written notice shall be grounds upon which County may terminate this contract pursuant to Paragraph 33 (TERMINATION FOR DEFAULT) and pursue debarment of Contractor, pursuant to County Code Chapter 2.202."

9. Paragraph 51 (Contractor Responsibility and Debarment) shall be deleted in its entirety and the following substituted therefor:

"51. CONTRACTORS RESPONSIBILITY AND DEBARMENT: The following requirements set forth in the County's Non-Responsibility and Debarment Ordinance (Title 2, Chapter 2.202 of the County Code) are effective for this Agreement, except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.

A. A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors.

B. The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other Agreements which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Agreement, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County Agreements for a specified period of time not to exceed 3 years, and terminate any or all existing Agreements the Contractor may have with the County.

C. The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of an Agreement with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects

on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

D. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

F. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the

Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.

G. These terms shall also apply to subcontractors of County Contractors."

10. Paragraph 52 (Contractor's Exclusion From Participation in a Federally Funded Program) shall be deleted in its entirety and the following substituted therefor:

"52. CONTRACTOR'S EXCLUSION FROM PARTICIPATION IN A FEDERALLY FUNDED PROGRAM: Contractor hereby warrants that neither it nor any of its staff members is restricted or excluded from providing services under any health care program funded by the Federal government, directly or indirectly, in whole or in part, and that Contractor will notify Director within 30 calendar days in writing of: (1) any event that would require Contractor or a staff member's mandatory exclusion from participation in a Federally funded health care program; and (2) any exclusionary action taken by any agency of the Federal government against Contractor or one or more staff members barring it or the staff members from participation in a Federally funded health care program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

There are a variety of different reasons why an individual or entity may be excluded from participating in a Federally funded health care program. Sometimes, the exclusion is mandatory and in other cases the Office of Inspector General (OIG) has the discretion not to exclude.

The mandatory bases for exclusion include: (1) felony convictions for program related crimes, including fraud or false claims, or for offenses related to the dispensing or use of controlled substances, or (2) convictions related to patient abuse.

Permissive exclusions may be based on: (1) conviction of a misdemeanor related to fraud or financial misconduct involving a government program; (2) obstructing an investigation; (3) failing to provide access to documents or premises as required by federal health care program officials; (4) conviction of a misdemeanor related to controlled substances; (5) failing to disclose information about the entity itself, its subcontractors or its significant business transactions; (6) loss of a state license to practice a health care profession; (7) default on a student loan given in connection with education in a health profession; (8) charging excessive amounts to a Federally funded health care program or furnishing services of poor quality or which are substantially in excess of the needs of the patients; (9) paying a kickback or submitting a false or fraudulent claim. Persons controlling or managing excluded entities who knew of the conduct leading to the exclusion can themselves be excluded, and entities which are owned and controlled by excluded individuals can also be excluded.

Contractor shall indemnify and hold County harmless against any and all loss or damage County may suffer arising from any Federal exclusion of Contractor or its staff members from such participation in a Federally funded health care program. Contractor shall provide the certification set forth in Attachment VI as part of its obligation under this Paragraph 52."

11. Paragraph 53 (Health Insurance Portability and Accountability Act (HIPAA)) shall be deleted in its entirety and the following substituted therefore:

"53. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT:

A. The parties acknowledge the existence of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA"). Contractor understands and agrees that it is a *"Covered Entity"* under HIPAA and, as such, has obligations with respect to the confidentiality, privacy, and security of patients' medical information, and must take certain steps to preserve the confidentiality of this information, both internally and externally, including the training of staff and the establishment of proper procedures for the release of such information, including the use of appropriate consents and authorizations specified under HIPAA.

B. The parties acknowledge their separate and independent obligations with respect to HIPAA, and that such obligations relate to *transactions and code sets*, *privacy*, and *security*. Contractor understands and agrees that it is separately and independently responsible for compliance with HIPAA in all these areas and that County has not undertaken any responsibility for compliance on Contractor's behalf. Contractor has not relied, and will not in any way rely, on County for legal advice or other representations with respect to Contractor's obligations under HIPAA, but will independently seek its own counsel and take the necessary measures to comply with the law and its implementing regulations.

C. Contractor and County understand and agree that each is independently responsible for HIPAA compliance and agree to take all necessary and reasonable actions to comply with the requirements of HIPAA law and implementing regulations related to Transactions and Code Sets, Privacy, and Security. Each party further agrees to indemnify and hold harmless the other party (including their officers, employees and agents) for its failure to comply with HIPAA.

D. Contractor and County understand and agree that HIPAA has imposed additional requirements in regards to changes in DMH's IS.

(1) County desires to clarify IS terminology under this Agreement as it relates to HIPAA, and, accordingly, has set forth in Attachment VIII (Crosswalk Fact Sheet) a "crosswalk" of technical terms, definitions and language to be used with this Agreement.

(2) County desires to clarify other HIPAA-related changes set forth in the DMH Provider Manual and which are incorporated herein by reference as though fully set forth.

(a) County has added to the DMH Provider Manual a Guide to Procedure Codes, which includes a "crosswalk" of DMH activity codes to Current Procedural Terminology (CPT) and Health Care Procedure Coding System (HCPCS) codes.

(b) County has added to the DMH Provider Manual an Electronic Data Interchange/Direct Data Entry (EDI/DDE) Selection and General Requirements Agreement, which includes the method in which Contractor or its

Subcontractor(s) elects to submit HIPAA-compliant transactions and requirements for these transactions.

(c) County has added to the DMH Provider Manual a Trading Partner Agent Authorization Agreement which includes the Contractor's authorization to its Subcontractor(s) to submit HIPAA-compliant transactions on behalf of Contractor.

E. Contractor understands that County operates an informational website www.dmh.co.la.ca.us related to the services under this Agreement and the parties' HIPAA obligations, and agrees to undertake reasonable efforts to utilize said website to obtain updates, other information, and forms to assist Contractor in its performance.

F. Contractor understands and agrees that if it uses the services of an Agent in any capacity in order to receive, transmit, store or otherwise process Data or Data Transmissions or perform related activities, the Contractor shall be fully liable to DMH or for any acts, failures or omissions of the Agent in providing said services as though they were the Contractor's own acts, failures, or omissions.

G. Contractor further understands and agrees that the terms and conditions of the current Trading Partner Agreement (TPA) set forth in the DMH Provider Manual shall apply to this Agreement and that said Terms and Conditions are incorporated by reference as though fully set forth herein."

12. Paragraph 57 (Compliance with the County's Living Wage Program) shall be deleted in its entirety and the following substituted therefor:

"57. COMPLIANCE WITH THE COUNTY'S LIVING WAGE PROGRAM:

(LANGUAGE APPLIES ONLY TO PROP A LIVING WAGE CONTRACTS)

A. Living Wage Program: This Contract is subject to the provisions of the County's ordinance entitled Living Wage Program as codified in Sections 2.201.010 through 2.201.100 of the Los Angeles County Code. is attached as *Exhibit* and incorporated by reference into and made a part of this Contract.

B. Payment of Living Wage Rates:

(1) Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not an "Employer" as defined under the Program (Section 2.201.020 of the County Code) or that the Contractor qualifies for an exception to the Living Wage Program (Section 2.201.090 of the County Code), the Contractor shall pay its Employees no less than the applicable hourly living wage rate, as set forth immediately below, for the Employees' services provided to the County under the Contract:

i. Not less than $9.46 per hour if, in addition to the per-hour wage, the Contractor contributes less than $1.14 per hour towards the provision of bona fide health care benefits for its Employees and any dependents; or

ii. Not less than $8.32 per hour if, in addition to the per-hour wage, the Contractor contributes at least $1.14 per hour towards the provision of bona fide health care benefits for its Employees and any dependents. The Contractor will be deemed to have contributed $1.14 per hour towards the provision of bona fide health care benefits if the benefits are

provided through the County Department of Health Services Community Health Plan. If, at any time during the Contract, the Contractor contributes less than $1.14 per hour towards the provision of bona fide health care benefits, the Contractor shall be required to pay its Employees the higher hourly living wage rate.

(2) For purposes of this Sub-paragraph, "Contractor" includes any subcontractor engaged by the Contractor to perform services for the County under the Contract. If the Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall be subject to the provisions of this Sub-paragraph. The provisions of this Sub-paragraph shall be inserted into any such subcontract Contract and a copy of the Living Wage Program shall be attached to the Contract. "Employee" means any individual who is an employee of the Contractor under the laws of California, and who is providing full-time services to the Contractor, some or all of which are provided to the County under the Contract. "Full-time" means a minimum of 40 hours worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the County; however, fewer than 35 hours worked per week will not, in any event, be considered full-time.

(3) If the Contractor is required to pay a living wage when the Contract commences, the Contractor shall continue to pay a living wage for the entire term of the Contract, including any option period.

(4) If the Contractor is not required to pay a living wage when the Contract commences, the Contractor shall have a continuing obligation to

review the applicability of its "exemption status" from the living wage requirement. The Contractor shall immediately notify the County if the Contractor at any time either comes within the Living Wage Program's definition of "Employer" or if the Contractor no longer qualifies for an exception to the Living Wage Program. In either event, the Contractor shall immediately be required to commence paying the living wage and shall be obligated to pay the living wage for the remaining term of the Contract, including any option period. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate to the County's satisfaction that the Contractor either continues to remain outside of the Living Wage Program's definition of "Employer" and/or that the Contractor continues to qualify for an exception to the Living Wage Program. Unless the Contractor satisfies this requirement within the time frame permitted by the County, the Contractor shall immediately be required to pay the living wage for the remaining term of the Contract, including any option period.

C. Contractor's Submittal of Certified Monitoring Reports: The Contractor shall submit to the County certified monitoring reports at a frequency instructed by the County. The certified monitoring reports shall list all of the Contractor's Employees during the reporting period. The certified monitoring reports shall also verify the number of hours worked, the hourly wage rate paid, and the amount paid by the Contractor for health benefits, if any, for each of its Employees. The certified monitoring reports shall also state the name and identification number of the Contractor's current health care benefits plan, and the Contractor's portion of the premiums paid as well as the portion paid by each

Employee. All certified monitoring reports shall be submitted on forms provided by the County (*Exhibit and Exhibit*), or other form approved by the County which contains the above information. The County reserves the right to request any additional information it may deem necessary. If the County requests additional information, the Contractor shall promptly provide such information. The Contractor, through one of its officers, shall certify under penalty of perjury that the information contained in each certified monitoring report is true and accurate.

D. Contractor's Ongoing Obligation to Report Labor Law/Payroll Violations and Claims: During the term of the Contract, if the Contractor becomes aware of any labor law/payroll violation or any complaint, investigation or proceeding ("claim") concerning any alleged labor law/payroll violation (including but not limited to any violation or claim pertaining to wages, hours and working conditions such as minimum wage, prevailing wage, living wage, the Fair Labor Standards Act, employment of minors, or unlawful employment discrimination), the Contractor shall immediately inform the County of any pertinent facts known by the Contractor regarding same. This disclosure obligation is not limited to any labor law/payroll violation or claim arising out of the Contractor's contract with the County, but instead applies to any labor law/payroll violation or claim arising out of any of the Contractor's operations in California.

E. County Auditing of Contractor Records: Upon a minimum of twenty-four (24) hours' written notice, the County may audit, at the Contractor's place of business, any of the Contractor's records pertaining to the Contract,

including all documents and information relating to the certified monitoring reports. The Contractor is required to maintain all such records in California until the expiration of four years from the date of final payment under the Contract. Authorized agents of the County shall have access to all such records during normal business hours for the entire period that records are to be maintained.

F. Notifications to Employees: The Contractor shall place County-provided living wage posters at each of the Contractor's places of business and locations where Contractor's Employees are working. The Contractor shall also distribute County-provided notices to each of its Employees at least once per year. The Contractor shall translate into Spanish and any other language spoken by a significant number of Employees the posters and handouts.

G. Enforcement and Remedies: If the Contractor fails to comply with the requirements of this Sub-paragraph, the County shall have the rights and remedies described in this Sub-paragraph in addition to any rights and remedies provided by law or equity.

(1) Remedies For Submission of Late or Incomplete Certified Monitoring Reports: If the Contractor submits a certified monitoring report to the County after the date it is due or if the report submitted does not contain all of the required information or is inaccurate or is not properly certified, any such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

(a) Withholding of Payment: If the Contractor fails to submit accurate, complete, timely and properly certified monitoring reports, the County may withhold from payment to the Contractor up to the full amount of any invoice that would otherwise be due, until Contractor has satisfied the concerns of the County, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

(b) Liquidated Damages: It is mutually understood and agreed that the Contractor's failure to submit an accurate, complete, timely and properly certified monitoring report will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for the Contractor's breach. Therefore, in the event that a certified monitoring report is deficient, including but not limited to being late, inaccurate, incomplete or uncertified, it is agreed that the County may, in its sole discretion, assess against the Contractor liquidated damages in the amount of $100 per monitoring report for each day until the County has been provided with a properly prepared, complete and certified monitoring report. The County may deduct any assessed liquidated damages from any payments otherwise due the Contractor.

(c) Termination: The Contractor's continued failure to submit accurate, complete, timely and properly certified monitoring reports may

constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

(2) Remedies for Payment of Less Than the Required Living Wage: If the Contractor fails to pay any Employee at least the applicable hourly living wage rate, such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

(a) Withholding Payment: If the Contractor fails to pay one or more of its Employees at least the applicable hourly living wage rate, the County may withhold from any payment otherwise due the Contractor the aggregate difference between the living wage amounts the Contractor was required to pay its Employees for a given pay period and the amount actually paid to the employees for that pay period. The County may withhold said amount until the Contractor has satisfied the County that any underpayment has been cured, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

(b) Liquidated Damages: It is mutually understood and agreed that the Contractor's failure to pay any of its Employees at least the applicable hourly living wage rate will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages

are not intended as a penalty or forfeiture for the Contractor's breach. Therefore, it is agreed that the County may, in its sole discretion, assess against the Contractor liquidated damages of $50 per Employee per day for each and every instance of an underpayment to an Employee. The County may deduct any assessed liquidated damages from any payments otherwise due the Contractor.

(c) Termination: The Contractor's continued failure to pay any of its Employees the applicable hourly living wage rate may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

(3) Debarment: In the event the Contractor breaches a requirement of this Sub-paragraph, the County may, in its sole discretion, bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach, not to exceed three years.

H. Use of Full-Time Employees: The Contractor shall assign and use full-time Employees of the Contractor to provide services under the Contract unless the Contractor can demonstrate to the satisfaction of the County that it is necessary to use non-full-time Employees based on staffing efficiency or County requirements for the work to be performed under the Contract. It is understood and agreed that the Contractor shall not, under any circumstance, use non-full-time Employees for services provided under the Contract unless and until the County has provided written authorization for the use of same. The Contractor submitted with its proposal a full-time Employee staffing plan. If the Contractor

changes its full-time Employee staffing plan, the Contractor shall immediately provide a copy of the new staffing plan to the County.

I. Contractor Retaliation Prohibited: The Contractor and/or its Employees shall not take any adverse action which would result in the loss of any benefit of employment, any contract benefit, or any statutory benefit for any Employee, person or entity who has reported a violation of the Living Wage Program to the County or to any other public or private agency, entity or person. A violation of the provisions of this Sub-paragraph may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

J. Contractor Standards: During the term of the Contract, the Contractor shall maintain business stability, integrity in employee relations and the financial ability to pay a living wage to its employees. If requested to do so by the County, the Contractor shall demonstrate to the satisfaction of the County that the Contractor is complying with this requirement.

K. Employee Retention Rights:

(Note: This Sub-paragraph applies only if the contract involves the provision of services that were previously provided by a Contractor under a predecessor Proposition A contract or a predecessor cafeteria services contract, which predecessor contract was terminated by the County prior to its expiration.)

(1) Contractor shall offer employment to all retention employees who are qualified for such jobs. A "retention employee" is an individual:

(a) Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the federal Fair Labor Standards Act; and

(b) Who has been employed by a Contractor under a predecessor Proposition A contract or a predecessor cafeteria services contract with the County for at least six months prior to the date of this new Contract, which predecessor contract was terminated by the County prior to its expiration; and

(c) Who is or will be terminated from his or her employment as a result of the County entering into this new contract.

(2) Contractor is not required to hire a retention employee who:

(a) Has been convicted of a crime related to the job or his or her performance; or

(b) Fails to meet any other County requirement for employees of a Contractor.

(3) Contractor shall not terminate a retention employee for the first 90 days of employment under the contract, except for cause. Thereafter, Contractor may retain a retention employee on the same terms and conditions as Contractor's other employees.

L. Neutrality in Labor Relations: The Contractor shall not use any consideration received under the Contract to hinder, or to further, organization of, or collective bargaining activities by or on behalf of the Contractor's employees, except that this restriction shall not apply to any expenditure made in the course

of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining Contract, or which would otherwise be permitted under the provisions of the National Labor Relations Act."

13. Attachment 1 (DEFINITIONS) to the Agreement shall be amended to incorporate all applicable terms and definitions including, but not limited to, the following:

NN. "Healthy Families" ("HF") means the federally subsidized health insurance program administered by the State of California for the provision of comprehensive health services (including medical, dental and vision care) to children ages birth through 19th birthday from low income families.

OO. "Healthy Families Procedures Manual" ("HF Procedures Manual") means DMH's Healthy Families Procedures Manual for providers. The HF Procedures Manual contains the formal requirements, policies and procedures governing Healthy Families and is incorporated into this Agreement by reference. Contractor hereby acknowledges receipt of the HF Procedures Manual upon execution of this Agreement.

PP. "Member" or Title XXI Healthy Families Program Member ("HFPM") means an enrollee in any Healthy Families Health Plan through Healthy Families.

QQ. "MRMIB" means the State of California Managed Risk Medical Insurance Board, the administrator of Healthy Families for the State of California.

RR. "Title XXI" means Title XXI of the Social Security Act, 42 United States Code Section 1396 et seq.

14. Contractor shall provide services in accordance with the Contractor's Fiscal Year _____ Negotiation Package for this Agreement and any addenda thereto approved in writing by Director.

15. Except as provided in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be subscribed by County's Director of Mental Health or his designee, and Contractor has caused this Amendment to be subscribed in its behalf by its duly authorized officer, the day, month, and year first above written.

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL

By _____
Principal Deputy County Counsel

COUNTY OF LOS ANGELES

By _____
MARVIN J. SOUTHARD, D.S.W.
Director of Mental Health

_____
CONTRACTOR

By_____

Name_____

Title_____
(AFFIX CORPORATE SEAL HERE)

APPROVED AS TO CONTRACT ADMINISTRATION:

DEPARTMENT OF MENTAL HEALTH

By_____
Chief, Contracts Development
and Administration Division

Extension Prop A Amend 2004-2005