COUNTY OF LOS ANGELES

MARVIN J. SOUTHARD, D.S.W.
Director

ROBIN KAY, Ph.D.
Acting Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

550 SOUTH VERMONT AVENUE, LOS ANGELES, CALIFORNIA 90020

BOARD OF SUPERVISORS
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
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MICHAEL D. ANTONOVICH

DEPARTMENT OF MENTAL HEALTH

http://dmh.lacounty.gov

Reply To: (213) 738-4601
Fax: (213) 386-1297

December 9, 2008

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 SETTLEMENT AGREEMENTS FOR FISCAL YEARS 2001-02 AND 2004-05 (SUPERVISORIAL DISTRICTS 1, 2, 3, AND 5) (3 VOTES)

SUBJECT

Request to enter into settlement agreements with ten Department of Mental Health Legal Entity Contractors to extend the Contractors' time to repay amounts owed to the County from three months to six months.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Director of Mental Health, or his designee, to prepare, sign and execute Settlement Agreements, substantially similar in format to Attachment I, to allow repayment of settlement amounts from Fiscal Years (FYs) 2001-02 and 2004-05 totaling $3,111,775 owed to the County to be paid over a period of six months, in lieu of the three-month repayment period stipulated in the financial provisions of the Department of Mental Health (DMH) Legal Entity (LE) Agreement, for ten LE Contractors, as detailed on Attachment II. The agreements will be effective upon Board approval.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

In accordance with the State's Settlement Report, County DMH initiates a settlement with the Contractors either to pay additional funds or to recover unearned funds from Contractors. Board approval of the Settlement Agreements will allow the Contractors to repay their County debts over a six-month period in lieu of the three-month repayment period as provided in the LE Agreement. This extension will mitigate an immediate adverse cash flow impact on the subject Contractors, enhance the probability of

recovery of County funds, and avoid any potential adverse impact on the level and quality of services provided.

Implementation of Strategic Plan Goals

The recommended Board action is consistent with the County Strategic Plan Goal 4, "Fiscal Responsibility."

FISCAL IMPACT/FINANCING

There is no increase in net County cost, or impact on DMH's FY 2008-09 Adopted Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The approval of the Settlement Agreement with Pacific Clinics will allow it to repay DMH, over the period of six months, for the funds owed as a result of the State's countywide Short-Doyle/Medi-Cal (SD/MC) Program Audit for FY 2001-02.

The State has completed the audit for mental health providers performing Medi-Cal services, which is approximately five years after the close of the FY. The result is the total services rendered were calculated and an earned amount was determined. DMH is initiating cash settlements based on the earned amount and will either pay the Contractors additional funds up to the earned amounts or recover over paid amounts above the earned amounts. In this instance, Pacific Clinics' repayment represents recovery of funds paid in excess of the cost of actual Medi-Cal services provided during FY 2001-02.

The approval of the Settlement Agreements with Barbour and Floyd Medical Associates; Dubnoff; Eisner; Penny Lane Centers; South Central Health and Rehabilitation Program; Transitional Living Centers for L.A. County, Inc.; Verdugo; D'Veal; and Aviva will allow them to repay County funds over a period of six months. The County funds owed by Contractors were identified during the FY 2004-05 SD/MC reconciliation process performed in compliance with State requirements of Medi-Cal mental health services providers. This process takes place approximately 18 months after the close of each FY and is based on the annual cost reports from subject Contractors that are required by the State Department of Mental Health (SDMH) to be submitted annually. Based on the submitted cost report, a SD/MC Reconciliation Settlement Report (Settlement Report) is issued by the State, which determines the amount earned by Contractors based on final approved SD/MC allowable units of service.

In the case of Hamburger Home (dba Aviva Family and Children Services), the FY 2004-05 settlement amount owed to the County is $530,471; however, Aviva is currently appealing $330,471 of the amount owed to DMH. As a result, the initial settlement agreement will be in the amount of $200,000. Upon resolution of the appeal, it is recommended that the Director of Mental Health, or his designee, be authorized to amend the Settlement Agreement to include any additional amounts owed to the County and to allow those payments to be made over a six-month period.

In the case of D'Veal Corporation (dba D'Veal Family and Youth Services), the FY 2004-05 settlement amount owed to the County is $418,082. D'Veal is currently paying $153,921 over the three (3) month repayment period as provided in the LE agreement. The balance of the amount owed to DMH of $264,161 is on appeal. Upon resolution of the appeal, it is recommended that the Director of Mental Health, or his designee, be authorized to amend the Settlement Agreement to allow payment of the remaining balance of $264,161 to be made over a six-month period.

According to the DMH LE Agreement repayment provision, the Contractors are required to repay the entire amount in a period not to exceed three months. The above-mentioned Contractors have informed DMH that repayment of the debts in a three-month period would result in adverse consequences for them. To avoid an adverse cash flow impact, the County and the Contractors are requesting Board approval to enter into a Settlement Agreement to extend the repayment period to six months with no interest charges.

Effective upon Board approval, the County will receive six monthly repayments from the Contractors until the County has fully recovered the funds owed. Such repayments can be either in the form of actual cash payments, deductions from the Contractors monthly claims, or a combination of both.

The Settlement Agreement has been approved as to form by County Counsel.

IMPACT ON CURRENT SERVICES

The extension of the repayment period will mitigate an immediate cash flow impact on the contractors and, thus, avoid a potential adverse change in the level and quality of services being provided to clients.

CONCLUSION

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

Respectfully submitted,

Robin Kay for

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

MJS:KW:MB

Attachments (2)

c: Chief Executive Office
County Counsel
Auditor-Controller
Chairperson, Mental Health Commission

ATTACHMENT I

CONTRACTOR: _____ _____
Contract Number

Business Address: _____ _____
Provider Number(s)

_____

_____
Reference Number(s)

Supervisorial District(s) _____

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of_____, 2008 between the County of Los Angeles (hereafter "County") and _____(hereafter "Contractor").

Business Address: _____

_____

WHEREAS, County believes it is in the best interest of the people of the County of Los Angeles for Contractor to repay Contractor's Debt to County in the manner described in this Agreement; and

WHEREAS, County and Contractor desire to enter into this Agreement in order to set forth the agreed plan by which Contractor shall repay Contractor's Debt to County; and

WHEREAS, hereafter, the total sum owed by Contractor to County shall be referred to as "Contractor's Debt"; and

WHEREAS, under the Agreement, Contractor currently owes County a determined sum at a maximum of _____DOLLARS ($_____) for Fiscal Year _____; and

WHEREAS, Contractor's debt for Fiscal Year _____ resulted from not providing enough services to generate the Federal Financial Participation (FFP) revenue required giveback under the Agreement due to audit disallowed costs and services under the Agreement; and

WHEREAS, the following terms, as used in this Agreement, shall have the following meanings:

A. "Day(s)" means calendar day(s) unless otherwise specified;

B. "Director" means County's Director of Mental Health or his/her authorized designee;

C. "DMH" means County's Department of Mental Health;

D. "Fiscal Year" means County's Fiscal Year which commences July 1 and ends the following June 30.

NOW, THEREFORE, Contractor and County agree as follows:

1. TERM: This Agreement shall commence on the date of Board approval, and shall continue in full force and effect thereafter until County's Board of Supervisors certifies, in writing, that Contractor has fully

repaid to County all of Contractor's Debt, as determined by County, and has satisfied all other obligations under this Agreement, as determined by County.

This Agreement may be terminated by County without cause at any time by giving at least thirty days prior written notice to Contractor. Other termination provisions for County are found in Paragraphs 3 (REPAYMENT OF CONTRACTOR'S DEBT), 7 (DELEGATION AND ASSIGNMENT), 11 (TERMINATION FOR INSOLVENCY), and 12 (TERMINATION FOR DEFAULT). Any termination of this Agreement shall be approved by County's Board of Supervisors.

In the event that this Agreement is terminated by County, then, upon the issuance of the notice of termination, the total outstanding Contractor's Debt, as determined by County, shall be immediately due and payable by Contractor to County and shall be repaid by Contractor to County by cash payment upon demand.

2. ADMINISTRATION: Director shall have the authority to administer this Agreement on behalf of County. Contractor shall designate in writing a Settlement Manager who shall function as liaison with County regarding Contractor's performance hereunder.

3. REPAYMENT OF CONTRACTOR'S DEBT:

A. Contractor shall repay Contractor's Debt to County at the repayment rate of _____ DOLLARS ($_____) over a 6-month period from_____, 2008 through_____, 2009.

B. For FY_____, Contractor shall pay County by cash payment, towards the repayment of Contractor's Debt, the total amount of_____ _____ DOLLARS ($_____) described in Subparagraph A at the rate of _____ DOLLARS ($_____) per month. Notwithstanding any other provision of this Agreement, in lieu of Contractor's cash payment of such _____ DOLLARS ($_____) per month to County, County may, in sole discretion, withhold _____DOLLARS ($_____) per month from any monthly billing

submitted by Contractor under any written agreement Contractor may have with County for mental health services during the particular FY and/or from any other amounts due by County to Contractor, provided that County shall withhold more than _____DOLLARS ($_____) per month pursuant to Paragraph 4.

C. Notwithstanding any other provision of this Agreement, in the event that County determines that Contractor has failed to make cash payment to County as described in Subparagraph B or in Paragraph 4 (INTEREST CHARGES) and that there is no written agreement between County and Contractor for mental health services and no amounts due by County to Contractor from which the withhold amounts described in Subparagraph B or in Paragraph 4 (INTEREST CHARGES) can be made, then the total outstanding Contractor's Debt, as determined by County, shall be immediately due and payable by Contractor to County and Contractor shall repay County by cash payment upon demand.

D. In the event of future audits, settlements, and/or reconciliations that result in money owed to Contractor for the FY(s) covered by this Agreement, such amount(s) shall be offset up to the outstanding balance of the Contractor's liability to County under this Agreement.

E. Pursuant to California Code of Civil Procedure Section 360.5, Contractor hereby waives all statutes of limitation upon Contractor's Debt as described in this Agreement. Whenever requested by County, Contractor shall promptly execute and deliver to County all instruments or other documents requested by County, including, but not limited to, additional written waivers, relating to contractor's waiver of all statutes of limitation upon Contractor's Debt during the term of this Agreement.

4. INTEREST CHARGES: In the event Contractor fails to pay County any amounts due to County under this Agreement within one year, then (1) Interest Charges shall be accrued at a rate equal to the County's pool rate on investments per day on the original settlement amount, due commencing on the 366th day after the original settlement date, and (2) at County's sole option, the entire Contractor's Debt then remaining unpaid, including interest, shall become immediately payable.

Contractor shall not be allowed to use County-generated revenues to pay any interest penalties.

Interest Charges shall be considered part of Contractor's Debt. Contractor shall pay County the Interest Charges due by cash payment upon demand.

Any payment by Contractor shall be applied first to Interest Charges computed in full to the date of such payments, and the remainder to principal.

5. LIABILITY FOR LEGAL COSTS: Contractor may become subject to legal action for any breach of this Agreement, and in such event, Contractor shall pay all court costs, County's expenses for the enforcement of the judgment, and County's Attorneys fees.

6. INDEMNIFICATION: Contractor shall indemnify, defend and hold harmless County and County Special Districts, their elected and appointed officers, employees, and agents, from and against any and all liability or expense, including, but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Agreement.

7. DELEGATION AND ASSIGNMENT: Contractor shall not delegate its duties or assign its rights under this Agreement, or both, either in whole or in part, without the prior written consent of County. Any prohibited delegation or assignment shall be null and void and shall constitute a material breach of this Agreement upon which County may terminate this Agreement.

8. GOVERNING LAW, JURISDICTION AND VENUE: This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California.

9. COMPLIANCE WITH APPLICABLE LAW:

A. Contractor shall comply with all Federal, State, and local laws, ordinances, rules, regulations, guidelines, and directives applicable to its performance hereunder. Further, all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

B. Contractor shall indemnify and hold harmless County from and against any and all liability, damages, costs or expenses, including, but not limited to, defense costs and attorneys' fees, arising from

or related to any violation on the part of Contractor, its officers, employees, or agents, of any such Federal, State or local laws, ordinances, rules, regulations, guidelines, or directives.

10. THIRD PARTY BENEFICIARIES: Notwithstanding any other provision of this Agreement, the parties do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement.

11. TERMINATION FOR INSOLVENCY:

A. County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

(1) Insolvency of Contractor: Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least 60 days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code.

(2) The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code.

(3) The appointment of a Receiver or Trustee for Contractor.

(4) The execution by Contractor of a general assignment for the benefit of creditors.

B. The rights and remedies of County provided in this Paragraph 11 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR DEFAULT:

A. County may, by written notice of default to Contractor, terminate this Agreement in any one of the following circumstances:

(1) If, as determined in the sole judgment of County, Contractor fails to perform within the times specified in this Agreement or any extension thereof as County may authorize in writing; or

(2) If, as determined in the sole judgment of County, Contractor fails to perform and/or comply with any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two

circumstances, does not cure such failure within a period of five days (or such longer period as County may authorize in writing) after receipt of notice from County specifying such failure.

B. The rights and remedies of County provided in this Paragraph 12 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

13. SEVERABILITY: If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14. CAPTIONS AND PARAGRAPH HEADINGS: Captions and paragraph headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in construing this Agreement.

15. ALTERATION OF TERMS: No addition to, or alteration of, the terms of this Agreement, whether by written or oral understanding of the parties, their officers, employees or agents, shall be valid and effective unless made in the form of a written amendment to this Agreement which is formally approved and executed by the parties in the same manner as this Agreement.

16. ENTIRE AGREEMENT: The body of this Agreement and County's letter to Contractor dated_____, which is attached hereto as Exhibit A and incorporated herein by references, shall constitute the complete and exclusive statement of understanding between the parties which supersedes all previous agreements, written or oral, and all other communications between the parties relating to the subject matter of this Agreement. In the event of any conflict or inconsistency between the body of this Agreement and Exhibit A, such conflict or inconsistency shall be resolved by giving precedence to the body of this Agreement.

17. WAIVER: No waiver by County of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision. Failure of County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 17 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

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18. CONTRACTOR'S OFFICES: Contractor shall notify in writing DMH's Contracts Development and Administration Division, and any other County office(s) as identified in Paragraph 20 (NOTICES), of any change in its business address, as shown on page I of this Agreement, at least 30 days prior to the effective date thereof.

19. AUTHORIZATION WARRANTY: Contractor represents and warrants that the person executing this Agreement for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition, and obligation of this Agreement and that all requirements of Contractor have been fulfilled to provide such actual authority.

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20. NOTICES: All notices or demands required or permitted to be given under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first class, registered or certified mail, postage pre-paid, addressed to the parties at the following addresses and to the attention of the persons named. Director shall have the authority to execute all notices or demands which are required or permitted by County under this Agreement. Addresses and persons to be notified may be changed by either party by giving ten days prior written notice thereof to the other party.

To Contractor: _____

_____

_____

Attention: _____

To County: (1) Department of Mental Health
550 S. Vermont Avenue
Los Angeles, CA 90020
Attention: Marvin J. Southard, D.S.W., Director

(2) Department of Mental Health
550 S. Vermont Avenue
Los Angeles, CA 90020
Attention: Lyn Wallensak
Administrative Deputy

(3) Department of Mental Health
550 S. Vermont Avenue, 5th Floor
Los Angeles, CA 90020
Attention: Richard Kushi, Chief
Contracts Development and Administration Division

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

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 FORM
OFFICE OF THE COUNTY COUNSEL

APPROVED AS TO CONTRACT
ADMINISTRATION:

DEPARTMENT OF MENTAL HEALTH

By_____
Chief, Contracts Development
and Administration Division

PP: Settlement

COUNTY OF LOS ANGELES - DEPARTMENT OF MENTAL HEALTH
FINANCIAL SERVICES BUREAU

FY 2008-09

EXTENDED 6 MONTHS REPAYMENT PLAN

Recommendation No.	Agreement No.	Entity Name	Settlement Amount owed by provider		Schedule of payment per month
FY 2001-02 SD/MC Program Audit					
1.	MH120144	Pacific Clinics	$ 326,262.00		$ 54,377.00
FY 2004-05 SD/MC Reconciliation					
2.	MH120194	Barbour and Floyd Medical Associates	$ 180,967.00		$ 30,161.17
3.	MH120155	Dubnoff Center for Child Development and Educational Therapy, dba Dubnoff	$ 127,874.00		$ 21,312.33
4.	MH120171	Pediatric and Family Medical Center, dba Eisner Pediatric & Family Medical Center	$ 35,941.00		$ 5,990.17
5.	MH120248	Penny Lane Centers, formerly National Foundation	$ 812,534.00		$ 135,422.33
6.	MH120177	South Central Health and Rehabilitation Programs (SCHARP)	$ 177,637.00		$ 29,606.17
7.	MH120179	Transitional Living Centers for L.A. County, Inc.	$ 200,325.00		$ 33,387.50
8.	MH120279	Verdugo Mental Health Center, Inc	$ 455,603.00		$ 75,933.83
9.	MH120212	D'Veal Corporation dba D'Veal Family and Youth Services (Pending appeal resolution)	$ 264,161.00	(1)	$ 44,026.83
10.	MH120160	Hamburger Home, dba Aviva Family and Children's Services	$ 200,000.00	(2)	$ 33,333.33
11.	MH120160	Hamburger Home, dba Aviva Family and Children's Services (Pending appeal resolution)	$ 330,471.00	(2)	$ 55,078.50
		TOTAL	$ 3,111,775.00		$ 518,629.17

(1) The total settlement amount owed to the County is $418,082. D'Veal is currently paying $153,921 over the 3 month repayment period as provided in the LE agreement. The balance of the amount owed to DMH of $264,161 is on appeal.

(2) The total settlement amount owed to the County is $530,471; however, Aviva is currently appealing $330,471 of the amount owed to DMH. As a result, the initial settlement agreement will be in the amount of $200,000.