**COUNTY OF LOS ANGELES**

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

SUSAN KERR
*Chief Deputy Director*

RODERICK SHANER, M.D.
*Medical Director*

550 SOUTH VERMONT AVENUE, LOS ANGELES, CALIFORNIA 90020

*BOARD OF SUPERVISORS*
GLORIA MOLINA
YVONNE B. BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

**DEPARTMENT OF MENTAL HEALTH**

http://dmh.lacounty.info

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

December 1, 2005

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 WITH PACIFIC CLINICS AND STIRLING ACADEMY, INC. (SUPERVISORIAL DISTRICTS 3 AND 5) (3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

Approve and instruct the Director of Mental Health or his designee to prepare, sign, and execute Settlement Agreements with existing Mental Health Services-Legal Entity contractors, Pacific Clinics (Agreement No. DMH-02343) and Stirling Academy, Inc. (Stirling) (Agreement No. DMH-02363), for the repayment of debt owed to the County, in a form substantially similar to the attached Settlement Agreement format (Attachment). This format is substantially similar to a previous Board-approved format. Effective upon your Board's approval, these Settlement Agreements will allow Pacific Clinics to repay its debt of $972,009 and Stirling to repay its debt of $78,679 to the County over a period of 12 months, beyond the three (3) months stipulated in the contract's financial provision.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS**

Your Board's approval of the Settlement Agreements will establish a 12-month repayment plan for the recovery of payments made by the County to Pacific Clinics and Stirling based on submitted billings that were subsequently determined by audits to be in excess of actual earned amounts for services rendered in Fiscal Year (FY) 2001-2002. Because the repayment period does not exceed 12 months, the Department of Mental Health (DMH) is recommending that interest be waived. This extension will mitigate an immediate adverse cash flow impact on the subject contractors so as to

enhance the probability of recovery of County funds and to avoid any potential adverse impact on the level of services that they provide.

Effective upon Board approval, the County will receive from Pacific Clinics a monthly payment of $81,001 for the first 11 months and $80,998 for the twelfth month, for a total repayment of $972,009; and receive from Stirling a monthly payment of $6,557 for the first 11 months and $6,552 for the twelfth month, for a total repayment of $78,679. There will be no interest charges imposed on Pacific Clinics and Stirling.

**Implementation of Strategic Plan Goals**

The recommended Board action is consistent with the County's Organizational Goal No. 4, "Fiscal Responsibility," within the Countywide Strategic Plan. Board approval will avoid placing immediate adverse cash flow problems on the contractors and enhance the probability of recovery of County funds.

**FISCAL IMPACT/FINANCING**

There is no fiscal impact on DMH's FY 2005-2006 Adopted Budget. These Settlement Agreements are a recovery of County funds paid in excess of actual earned amounts for services rendered in FY 2001-2002. The amounts owed by the contractors are determined through the FY 2001-2002 Short-Doyle Medi-Cal (SD/MC) reconciliation process performed in compliance with State requirements of Medi-Cal mental health services contractors.

The State has effected the SD/MC reconciliation for FY 2001-2002. This means that DMH paid the State $972,009 owed by Pacific Clinics and $78,679 owed by Stirling. The State recovered their funds by offsetting against DMH's current year Medi-Cal revenue. This is the State's customary method of recovering their funds resulting from an audit settlement. Accordingly, DMH will restore department funds through collection from the contractors. DMH's policy is to not collect identified audit/settlement disallowances from contractors until the State has collected from the County. Consequently, there is a timing difference between when the State makes recovery from the County and when the County makes recovery from the contractors. During this period, DMH is financing the contractors' disallowed amounts until DMH makes recovery from the contractors.

Pacific Clinics will repay its debt of $972,009 in monthly installments for 12 months and Stirling will repay its debt of $78,679 in monthly installments for 12 months with no interest charges on the unpaid balances. The repayment method is in the form of offset against monthly claims for reimbursement and will continue until the entire balance has

been repaid. In the event that the monthly claim for reimbursement is insufficient to cover the monthly repayment, the contractors will be required to remit the difference to DMH.

| | Monthly Collection | Months | Total Collection |
|---|---|---|---|
| Pacific Clinics *Collect $80,998 on the 12th month | $81,001* | 12 | $972,009 |
| Stirling *Collect $6,552 on the 12th month | $6,557* | 12 | $78,679 |

It is necessary to inform your Board that Stirling is currently repaying the County its FY 2000-2001 Medi-Cal over-billings debt under Settlement Agreement No. DMH-01886. On September 7, 2004, your Board approved allowing Stirling to repay its debt of $328,086 over a 12-month period, with a monthly collection amount of $27,341. To date, the County has collected $273,404 in the form of offset against Stirling's monthly reimbursement claims. The debt balance is now $54,682. The anticipated collection period is two (2) more months.

The proposed Settlement will add a second Settlement with Stirling. Upon Board approval, the two (2) Settlements will run concurrently for the first two (2) months. The anticipated monthly offset schedule amount is computed below:

| Fiscal Year | Adopted Date | Remaining Debt Balance | Remaining Offset Months | Monthly Offset Amount |
|---|---|---|---|---|
| 2000-2001 | 9-7-04 | $54,682 | 2 | $27,341 |
| 2001-2002 | Upon Board Approval | $78,679 | 12 | $ 6,557 |

## FACTS AND PROVISIONS/LEGAL REQUIREMENTS

These Settlement Agreements are a recovery of funds paid on the basis of the contractors' billings. The County's contractors rendered and billed the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Title XIX Medi-Cal program for eligible services to Medi-Cal beneficiaries in FY 2001-2002, and the State adjudicated and approved these billable EPSDT services.

However, the State SD/MC reconciliation demonstrated that those contractors' billings were in excess of their actual earned amount for services rendered in FY 2001-2002.

The State Department of Mental Health (SDMH) requires an annual cost report from each contractor who provides SD/MC mental health services. Based on the submitted cost report, a SD/MC Reconciliation Settlement Report is issued by the State, which determines the amount earned by the contractor based on final approved SD/MC allowable units of services.

In accordance with the earned amount determined by the SD/MC Reconciliation Report from the State, County DMH initiates a cash settlement with the contractor, either to pay additional funds or to recover unearned funds from the contractor. The amount owed is determined by the County through the FY 2001-2002 SD/MC reconciliation settlement process performed in compliance with State requirements for Medi-Cal mental health services contractors and is the result of the State's fulfillment of its responsibilities for the management and oversight of the Federal Medicaid program, which is called Medi-Cal in California.

The DMH Legal Entity Agreement repayment provision stipulates that the contractor will repay the entire amount in a period not to exceed three (3) months. Pacific Clinics and Stirling have informed DMH that collection of the debts in a three-month period would result in adverse consequences for them. To avoid an adverse cash flow impact, the County, Pacific Clinics, and Stirling intend to enter into Settlement Agreements to extend the repayment period to 12 months with no interest charges.

These Settlement Agreements are consistent with recommendations made to your Board in David E. Janssen's February 3, 2003, Board letter entitled, "Settlement Agreements and the Cash Flow Loan Program." Page 2, Paragraph 1 of "Timely Repayment of Settlement Agreements" section states: "Should the provider exceed the three month period, DMH negotiates a repayment settlement agreement. Any repayment settlement agreements must be approved by the Board." Paragraph 2 states: "Repayment settlement agreements help providers mitigate an immediate adverse cash flow impact, thereby enhancing the probability of recovery of County funds. Because this situation often occurs with smaller community-based agencies, many settlement agreements do not provide for penalties or interest payments on the unpaid balance." Page 3, Paragraph 1 states: "A requirement that contractors pay interest if the repayment period exceeds one year. That is, if the provider completes repayment within one year, interest charges will be waived." Because Pacific Clinics' and Stirling's repayment period is 12 months, DMH, therefore, recommends that there be no interest charges.

The Department is in full cognizance of Stirling's recurring over-billing problems, resulting from the MC/SD reconciliation process, and is committed to take appropriate actions to assist Stirling to avoid such problems in the future. As a first measure,

Stirling will be placed under close monitoring of its billing practices to ensure that monthly claims approximate its actual costs. DMH will conduct regular monitoring of Stirling's business practices throughout the remainder of this fiscal year. Should Stirling's over-billing problem persists, DMH will be compelled to consider more stringent measures, which may include reallocation of Stirling's Maximum Contract Amount downward for future fiscal years.

The Settlement Agreement has been approved as to form by County Counsel. In addition, the proposed action has been reviewed and approved by County Counsel, Chief Administrative Officer, and Auditor-Controller.

## IMPACT ON CURRENT SERVICES

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

## 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,

R SHANGE MD
MEDICAL DIRECTOR

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

MJS:MY:RK

Attachment

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

cc\myfiles\board letter-pc and stirling (12-01-05)

**ATTACHMENT**

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_____, 2005 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.

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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 12-month period from_____, 2005 through_____, 2006.

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.

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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.

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.

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.

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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: Jeremy Cortez

Finance Specialist

(3) Department of Mental Health

550 S. Vermont Avenue, 5th Floor

Los Angeles, CA 90020

Attention: Richard Kushi, Chief

Contracts Development and Administration Division

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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

Settlement