COUNTY OF LOS ANGELES

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

ROBIN KAY, Ph.D.
Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

BOARD OF SUPERVISORS

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DEPARTMENT OF MENTAL HEALTH

http://dmh.lacounty.gov

550 SOUTH VERMONT AVENUE, LOS ANGELES, CALIFORNIA 90020

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

September 07, 2010

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
#17 SEPTEMBER 7, 2010
Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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

Dear Supervisors:

APPROVAL TO EXTEND THE REPAYMENT OF CASH FLOW ADVANCES OF $68,542 OWED BY ALCOTT CENTER FOR MENTAL HEALTH SERVICES (SUPERVISORIAL DISTRICT 2) (3 VOTES)

SUBJECT

Request approval to enter into a repayment settlement agreement with Alcott Center for Mental Health Services, a Department of Mental Health Legal Entity contractor, to extend the repayment period of outstanding unearned cash flow advances.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Director of Mental Health, or his designee, to extend, for a period not to exceed eight months, the recovery period of the outstanding unearned cash flow advances (CFA) totaling $68,542, owed by Alcott Center for Mental Health Services (Alcott Center).

2. Approve and instruct the Director of Mental Health, or his designee, to prepare, sign and execute a settlement agreement, substantially similar to the Attachment, with Alcott Center extending the repayment period.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Board approval of the recommended actions will extend the repayment period of outstanding unearned CFA for Alcott Center. Alcott Center has requested an extension to repay the outstanding

unearned CFA over a period not to exceed eight months from approval of this letter, in lieu of the three-month repayment period provided in its Legal Entity agreement. Alcott Center has indicated that the repayment of its outstanding unearned CFA over three months will have an immediate adverse fiscal impact on its operations. This extension will mitigate an immediate adverse impact on Alcott Center, enhance the probability of recovery of funds, and avoid any potential adverse impact on the level and quality of services provided.

Implementation of Strategic Plan Goals

The recommended Board actions support the County's Strategic Plan Goal 4, Health and Mental Health.

FISCAL IMPACT/FINANCING

These actions will have no impact on DMH's net County cost for Fiscal Year (FY) 2010-11 as they involve prior year activity in FY 2007-08. Costs incurred in providing the CFA are expensed during the applicable fiscal years. Alcott Center owes $68,542 for unearned CFA. Deferring the recovery of CFA places the adverse cash flow impact on the County instead of the providers. However, the adverse impact on the quality and amount of client services being provided by the contractor will be mitigated by avoiding its need to reduce expenditures further in order to absorb the financial impact of CFA repayment under the original terms.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

CFA is a disbursement of funds to the contractor for working capital purposes. Such advances are fiscal year specific and are made to provide funds for the contractor to operate during the period of time from the delivery of the services to DMH payment of the claims. CFA is contractually restricted to the provider's mental health programs. Earned interest, if any, is required to be expended on mental health programs. The recovery of the CFA is made either as offsets to the contractor's reimbursement claims or by cash repayment.

On September 29, 2009, your Board authorized the Director of Mental Health to defer the recovery of CFA from certain contractors pending the State's completion of the FY 2007-08 Short-Doyle/Medi-Cal (SD/MC) cost report reconciliation and settlement.

In February 2010, DMH began the recovery process of CFA from all the contractors cited in the September 29, 2009 Board letter. However, Alcott Center indicated that it would not be able to repay the outstanding amount owed in three installments, as it would have an adverse cash flow impact. Alcott Center has requested an extension of the repayment period. To avoid an adverse impact on Alcott Center and the mental health services they deliver, DMH and Alcott Center are requesting Board approval to enter into a repayment agreement over a period of up to eight months without interest. Additionally, DMH suspended recovery of the CFA owed by Alcott Center, pending your Board's approval of the repayment settlement agreement.

Effective upon your Board's approval, DMH will execute a repayment agreement with Alcott Center to allow it to make monthly repayments over a period not to exceed eight months. Such repayments can be in the form of cash payments, deductions from Alcott Center's monthly claims, or a combination of both. This proposed repayment period also allows sufficient time for Alcott Center to take actions to improve its financial condition without disruption to its current service delivery level. Alcott Center has also provided DMH with a comprehensive financial plan to support the repayment

schedule, and DMH has verified the reasonableness of the plan's assumptions and projections.

The attached repayment settlement agreement format has been approved as to form by County Counsel. The Chief Executive Officer has reviewed the proposed actions.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The extension of the repayment period will mitigate an immediate adverse cash flow impact on Alcott Center, thus avoiding a potential adverse change in the level and quality of services being provided to clients. Alcott Center has been made aware that it will not be eligible to bid for additional program dollars while repaying the CFA.

Respectfully submitted,

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

MJS:TB:RK:mi

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors
Chairperson, Mental Health Commission

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_____, 2010 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 2007-08; and

WHEREAS, Contractor's debt for Fiscal Year 2007-08 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 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 an 8-month period from_____, 201_ through_____, 201_.

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 eight months, 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.

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: Margo Morales

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

MI: Settlement