

**FIRST AMENDMENT TO AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND LENA OSHER**

THIS FIRST AMENDMENT TO THE AGREEMENT, entered into this _____ day of _____, 20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Lena Osher, MD, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an Agreement on July 12, 2022, for the purpose of providing psychiatric services for clients with mental health problems herein after described for San Mateo County Health, Behavioral Health and Recovery Services Division; and

WHEREAS, the parties wish to amend the Agreement to increase the rate of compensation to be equivalent to County employee physicians; and

WHEREAS, the parties wish to amend the Agreement to include compliance with executive orders.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Section 3. Payments of the agreement is amended to read as follows:

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed ONE MILLION TWO HUNDRED SEVENTY-EIGHT THOUSAND EIGHT HUNDRED ONE DOLLARS (\$1,278,801). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

- 2.. Section 11. Compliance With Laws is amended to read as follows:

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law, regulation, or executive order, the requirements of the applicable law, regulation, or executive order will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

3. Exhibit A is hereby deleted and replaced with Exhibit A-1 attached hereto.
4. Exhibit B is hereby deleted and replaced with Exhibit B-1 attached hereto.
5. All other terms and conditions of the agreement dated July 12, 2022, between the County and Contractor shall remain in full force and effect.

Signature page follows

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors
San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

LENA OSHER , MD

DocuSigned by:


Contractor's Signature

Date: 10/25/2022

EXHIBIT A-1 SERVICES
LENA OSHER, M.D.
FY 2022 - 2025

In consideration of the payments set forth in Exhibit B-1, Contractor shall provide the following services:

I. DESCRIPTION OF SERVICES

A. INTRODUCTION

For the term of this Agreement as herein specified, Contractor shall provide psychiatry evaluation and treatment to youth clients of the Behavioral Health and Recovery Services Division (BHRS).

B. SERVICES

Contractor shall provide the following services:

1. Contractor shall provide psychiatric services for children and youth. Services may include medication evaluation and treatment, diagnostic evaluations, psychotherapy, family consultation, treatment plan review, case consultation, and other duties as needed. Clinic service sites will include Canyon Oaks Youth Residential Center, Central County Mental Health, South County Mental Health, School-Based Mental Health, and other sites as assigned. Such services shall be provided in a professional and diligent manner.
2. Contractor shall receive general administrative and clinical supervision from the Supervising Child Psychiatrist or designee.
3. Contractor shall provide services up to an average of thirty-two (32) hours per week.
4. Case documentation shall be maintained in compliance with Short-Doyle Medi-Cal standards as described in DMH Notice 94 14, the Rehabilitation option including completion of the Physician's Initial Note, Mental Health Services Medication Consent Forms, and progress and prescribing notes. Charts shall be subject to annual medication monitoring review. Documentation shall be completed in compliance with the San Mateo County BHRS San Mateo Documentation Manual, which is included in the Agreement by reference herein.

5. Service Standards

- a. Contractor will meet County expectations of outpatient clinic productivity.
- b. Contractor will work cooperatively with County designees to optimize work flow, including participating in work-flow analysis, appropriate use of scheduling, division of duties, optimal use of clinic staff, and other activities as designated by County.
- c. Contractor will make all reasonable efforts to participate in coordination and optimization of services, including but not limited to active participation in Quality Improvement and Utilization Management efforts.
- d. Contractor will make all reasonable efforts to schedule the provision of services in a manner that complies with the County's staffing needs.
- e. Contractor will attempt to provide two (2) months' notice, but shall not provide less than two (2) weeks, for non-emergency absences from assigned duties. Notice shall be provided electronically or in writing to all relevant service areas.

C. Professional Standards

Contractor shall perform her duties under this Agreement in accordance with the rules of ethics of the medical profession. Contractor shall also perform her duties under this Agreement in accordance with the appropriate standard of care for his/her medical profession and specialty.

D. Provision of Records for County

Contractor shall furnish any and all information, records and other documents related to Contractor's services hereunder which County may reasonably request in furtherance of its quality assurance, utilization review, risk management, and any other plans and/or programs adopted by County to assess and improve the quality and efficiency of County's services. As reasonably requested, Contractor shall participate in one or more of such plans and/or programs.

- E. Contractor shall furnish any and all information, records and other documents related to Contractor's services hereunder which County may reasonably request in furtherance of its quality assurance, utilization review, risk management, and any other plans and/or programs adopted by County to assess and improve the quality and efficiency of County's services. As reasonably requested, Contractor shall participate in one or more of such plans and/or programs.

Contractor shall inform County of any other arrangements which may present a professional, financial, stark law, or any other state or federal conflict of interest or materially interfere in Contractor's performance of its duties under this Agreement. In the event Contractor pursues conduct which does, in fact, constitute a conflict of interest or which materially interferes (or is reasonably anticipated to interfere) with Contractor's performance under this Agreement, County may exercise its rights and privileges hereunder.

- F. No Contract in County Name

Contractor shall not have the right or authority to enter into any contract in the name of County or otherwise bind County in any way without the express written consent of County.

- G. Health Order Compliance

1. Health Order Compliance Requirements

Contractor shall comply with all current health orders issued by the State Department of Health and the County Health Officer until such orders are lifted or deemed no longer necessary for health reasons by the State Department of Health and/or the San Mateo County Health Officer. Current health orders can be found at: <https://covid19.ca.gov/> and at <https://covid19.ca.gov/safer-economy/> for statewide information and at: <https://www.smchealth.org/health-officer-updates/orders-health-officer-quarantine-isolation> for County information.

At a minimum, Contractor will ensure the following:

- a. All clients, staff and volunteers are required to wear face coverings, exceptions can be made for the children served as allowed under state and County health guidelines.
- b. Contractor will create and implement protocols for personal

protective equipment (PPE) use, handwashing, isolation for clients who test positive for COVID-19, and visitor protocols (if allowed under the current health order and in compliance with health order requirements (mass testing, which can be met by participating in the BHRS Surveillance Program).

- c. The requirements and protocols mentioned in items a and b above, as well as all the identified strategies related to the pandemic, should be organized into a basic COVID-19 Plan. The plan should identify what impacts and hazards the pandemic poses for your organization, your response to mitigate these impacts and hazards, thresholds that balance workforce location between telework to in office to face to face services for clients, for example. This simple, living document, should reflect what is important to your organization and how you will manage during the pandemic.

2. Service Delivery During Health Order Restrictions

Contractor will create and implement alternate options for service delivery, such as using the telephone and/or online sessions via a virtual platform (such as Zoom, Teams, etc.), in the event that services cannot be performed face-to-face. The virtual platform selected by the Contractor must have security protocols that ensure health information and the identity of clients is protected.

In the event that the Contractor cannot transition from face-to-face services to a virtual format, or other contracted work cannot be performed, Contractor will notify the BHRS Program Manager to develop alternatives to providing deliverables and/or cancelation of services if a solution cannot be reached. In the event that services are canceled or cannot be performed, funding shall be reduced commiserate with the reduction of services.

II. ADMINISTRATIVE REQUIREMENTS

- A. Compliance with Health Information Privacy and Accountability Act (HIPAA).

Contractor must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information (PHI), including electronic PHI, that it creates, receives, maintains, uses or transmits, in compliance with 45 C.F.R and to prevent use or disclosure of PHI other

than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards. Contractor is required to report any security incident or breach of confidential PHI to BHRS Quality Management within twenty – four (24) hours.

Contractor will develop and maintain written information Privacy and Security Program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.

Contractor agrees to comply with the provisions of 42 C.F.R. Part 2 as described below if records contain or contract possesses any PHI covered under 42 C.F.R Part 2:

1. Acknowledge that in receiving, storing, processing, or otherwise using any information from BHRS about the clients in the program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Behavioral Health and Recovery Services Patient Records, 42 C.F.R. Part 2;
2. Undertake to resist in judicial proceedings any effort to obtain access to information pertaining to clients otherwise than as expressly provided for in the federal confidentiality regulations, 42 C.F.R. Part 2; and
3. Agree to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected information.

Confidentiality Training:

Contractor is required to conduct, complete and maintain record of annual confidentiality training by all staff serving or accessing PHI of BHRS clients. Contractor may utilize the County of San Mateo BHRS Confidentiality trainings located at <http://smchealth.org/bhrs/providers/ontrain>

Other Required Training

Contractor will complete and maintain a record of annual required trainings. The following trainings must be completed on an initial and then annual basis:

- a. HIPAA Training
- b. Compliance Training
- c. Fraud, Waste, & Abuse Training

- d. Critical Incident Management for BHRS
- e. Cultural Humility
- f. Interpreter training (if using interpreter services)

Trainings may be offered through the County's Learning Management System (LMS) located at: https://sanmateocounty.csod.com/LMS/catalog/Welcome.aspx?tab_page_id=-67.

Contractor must register on the LMS site to access the training modules. The link to register for a LMS new account is: <https://sanmateocounty.csod.com/selfreg/register.aspx?c=bhrscp01>. Proof of training, such as certificate of completion, may be requested at any time during the term of this Agreement.

B. Compliance Plan and Code of Conduct

Contractor will annually read and be knowledgeable of the compliance principles contained in the BHRS Compliance Plan and Code of Conduct located at <http://smchealth.org/bhrs-documents>. In addition, Contractor will assure that Contractor's workforce is aware of compliance mandates and informed of the existence and use of the BHRS Compliance Improvement Hotline (650) 573-2695.

C. Reporting of Convictions

Contractor shall report any and all felony and/or misdemeanor convictions that occur during the term of this agreement within seventy-two (72) hours of the conviction. A conviction may, at the discretion of the County, result in the termination of the agreement. Each conviction will be reviewed by County to determine if it is substantially related to the services provided through the agreement prior to making a determination regarding termination of the agreement. Failure to report a conviction within seventy-two (72) hours of the conviction may, at the discretion of the County, result in termination of the agreement.

D. Qualifications

1. Contractor shall at all times keep and maintain a valid license to engage in the practice of medicine in the State of California.
2. Contractor shall be certified by the appropriate State recognized Board in California (or eligible for certification by such Board by virtue of having successfully completed all educational and residency

requirements required to sit for the Board examinations).

E. Miscellaneous Duties and Responsibilities

Contractor will cooperate with the administration of psychiatry services. Such cooperation shall include, but not limited to maintaining medical records in a timely fashion.

F. Compliance with Rules and Regulations

Contractor agrees to abide by rules, regulations and guidelines of County, as the County may from time to time amend, add or delete rules, regulations or guidelines at County's sole discretion and such amendment will not affect the enforceability or terms of this Agreement.

G. Requirement of Physician to Notify County of any Detrimental Professional Information or Violation of County Rules or Policies

Contractor shall notify County upon the occurrence of any and/or all of the following:

1. Contractor's license to practice medicine in any jurisdiction is suspended, revoked, or otherwise restricted;
2. A complaint or report concerning Contractor's competence or conduct is made to any state medical or professional licensing agency;
3. Contractor's privileges at any hospital, health care County or under any health care plan are denied, suspended, restricted or terminated (other than by Contractor) or under investigation for medical disciplinary cause or reason;
4. Contractor's controlled substance registration certificate (issued by the Drug Enforcement Administration) if any, is being, or has been suspended, revoked or renewed;
5. Contractor's participation as a Medicare or Medi-Cal provider is under investigation or has been terminated;
6. There is a material change in any of the information the Contractor has provided to County concerning Contractor's professional qualification or credentials;
7. Contractor must also notify the County within thirty (30) days of:

- a. any breach of this Agreement;
- b. any material violation of County's rules or regulations by the Contractor himself/herself; or
- c. if the Contractor is subject to or participates in any form of activity which would be characterized as discrimination or harassment.

H. Automatic Termination

This Agreement shall be immediately terminated as follows:

1. Upon Contractor's loss, restriction or suspension of his or her professional license to practice medicine in the State of California;
2. Upon Contractor's suspension or exclusion from either the Medicare or Medi-Cal Programs;
3. If the Contractor violates the State Medical Practice Act;
4. If the Contractor's professional practice imminently jeopardizes the safety of clients;
5. If Contractor violates ethical and professional codes of conduct of the workplace as specified under state and federal law;
6. Contractor has a guardian or trustee of its person or estate appointed by a court of competent jurisdiction;
7. Contractor becomes disabled so as to be unable to perform the duties required by this Agreement;
8. Contractor fails to maintain professional liability insurance required by this Agreement;

I. Tail Coverage

If Contractor obtains one or more claims-made insurance policies to fulfill its obligations, Contractor will: (1) maintain coverage with the same company during the term of this Agreement and for at least three (3) years following termination of this Agreement; or (2) purchase or provide coverage that assures protection against claims based on acts or omissions that occur during the period of this Agreement which are asserted after the claims-

made insurance policy expired.

J. Availability and Accessibility

Contractor shall offer hours of operation that are no less than the hours of operation offered to commercial enrollees, if the Contractor also serves enrollees of a commercial plan, or that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered by the County or another Mental Health Plan, if the Contractor serves only Medi-Cal clients.

III. GOAL AND OBJECTIVE

Contractor shall ensure that the following outcome objectives are pursued throughout the term of this Agreement:

Goal 1: Clients will maintain their current or reduced level of placement.

Objective 1: At least eighty percent (80%) of clients served will maintain their current or reduced level of placement

*** End of Exhibit A-1 ***

EXHIBIT B-1 PAYMENTS AND RATES
LENA OSHER, M.D.
FY 2022 - 2025

In consideration of the services provided by Contractor in Exhibit A-1, County shall pay Contractor based on the following fee schedule:

I PAYMENTS

A. Maximum Obligation

The maximum amount that County shall be obligated to pay for all services provided under this Agreement shall not exceed the amount stated in Paragraph 3 of this Agreement.

In any event, the maximum amount County shall be obligated to pay for all services rendered under this Agreement shall not exceed ONE MILLION TWO HUNDRED SEVENTY-EIGHT THOUSAND EIGHT HUNDRED ONE DOLLARS (\$1,278,801).

B. Rates of Services

For the term of July 1, 2022 through June 30, 2023, County shall pay Contractor at a rate of TWO HUNDRED FORTY-SEVEN DOLLARS AND EIGHTY-TWO CENTS (\$247.82) per hour for up to an average of thirty-two (32) hours per week, not to exceed FOUR HUNDRED TWELVE THOUSAND THREE HUNDRED SEVENTY-TWO DOLLARS (\$412,372).

For the term of July 1, 2023 through June 30, 2024, County shall pay Contractor at a rate of TWO HUNDRED FIFTY-FIVE DOLLARS AND TWENTY-THREE CENTS (\$255.23) per hour for up to an average of thirty-two (32) hours per week, not to exceed FOUR HUNDRED TWENTY-FOUR THOUSAND SEVEN HUNDRED THREE DOLLARS (\$424,703).

For the term of July 1, 2024 through June 30, 2025, County shall pay Contractor at a rate of TWO HUNDRED SIXTY-FIVE DOLLARS AND FORTY-SIX CENTS (\$265.46) per hour for up to an average of thirty-two (32) hours per week, not to exceed FOUR HUNDRED FORTY-ONE THOUSAND SEVEN HUNDRED TWENTY-SIX DOLLARS (\$441,726).

C. Monthly Invoice and Payment

Payment by County to Contractor shall be monthly. Contractor shall bill County on or before the tenth (10th) working day of each month for the prior month. Such invoices shall be on County provided forms or in a County approved format. County reserves the right to change the forms, format, instructions, and/or require the Contractor to modify their description of services as the County deems necessary.

Invoices that are received after the tenth (10th) working day of the month are considered to be late submissions and may be subject to a delay in payment. Claims may be sent to:

San Mateo County Health System
Behavioral Health and Recovery Services Division
Attn: Accounting Unit
2000 Alameda de las Pulgas
Suite 280
San Mateo, CA 94403

D. Billing and Compliance

Contractor shall prepare such administrative and business records and reports related to the Service in such format and upon such intervals, as County shall reasonably require. Contractor shall not directly submit a billing statement of charges to any County client or other entity for services arising from the practice of medicine, nor shall Contractor make any surcharge or give any discount for care provided without the prior written authorization of County. The County has complete authority to assign clients to Contractor, determine write-offs, and take any other action relating to billing and collection of fees for clinical services. All accounts receivable generated for services rendered by Contractor pursuant to this Agreement are the property of the County. Contractor shall have the right to review any and all billings for his/her services bearing his/her name of Provider Number.

- E. If County or Contractor finds that performance is inadequate, at the County's discretion, a meeting may be called to discuss the causes for the performance problem, and this Agreement may either be renegotiated, allowed to continue to end of term, or terminated pursuant to Paragraph 5 of this Agreement.
- F. County anticipates the receipt of revenues from various sources to be used to fund services provided by Contractor through this Agreement. Should planned or actual revenues be less than the amounts anticipated at the time of the signing of this Agreement, the maximum payment obligation and/or payment obligations for specific services may be reduced at the discretion of the Chief of the Health System or designee.
- G. The Chief of the Health System or the Chief's designee is authorized to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.
- H. In the event this Agreement is terminated prior to June 30, 2025, the Contractor shall be paid for services already provided pursuant to this Agreement.
- I. Client Records Upon Termination and Notice to Clients

All original client records shall be property of the County. Upon termination of this Agreement, Contractor shall return any such records as may be in Contractor's possession to County, subject to Contractor's right to copies of records.

- J. Invoice Certification and Program Integrity

Anytime Contractor submits a claim to the County for reimbursement for services provided under Exhibit A-1 of this Agreement, Contractor shall certify by signature that the claim is true and accurate by stating the claim is submitted under the penalty of perjury under the laws of the State of California.

The claim must include the following language and signature line at the bottom of the form(s) and/or cover letter used to report the claim.

"Under the penalty of perjury under the laws of the State of California, I hereby certify that this claim for services complies with all terms and conditions referenced in the Agreement with San Mateo County.

Executed at _____ California, on _____ 20____

Signed _____ Title _____

Agency _____ ”

K. Change of Circumstances

In the event (1) Medicare, Medi-Cal, or any third party payor or any federal, state or local legislative or regulative authority adopts any law, rule, regulation, policy, procedure or interpretation thereof which establishes a material change in the method or amount of reimbursement or payment for services under this Agreement, or if (2) any or all such payors/authorities, impose requirements which require a material change in the manner or either party's operations under this Agreement and/or the costs related thereto, then upon the request of either party materially affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstance while preserving the original intent of this Agreement to the greatest extent possible. If after thirty (30) days of such negotiations, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days prior written notice.

*** End of Exhibit B-1 ***