1 SNELL & WILMER L.L.P. Jeffrey M. Singletary (#233528) 2 jsingletary@swlaw.com Gregory J. Sonnenberg (#331216) 3 gsonnenberg@swlaw.com Kina J. Wong (#356558) 4 kwong@swlaw.com 600 Anton Blvd, Suite 1400 5 Costa Mesa, California 92626-7689 Telephone: 714.427.7000 6 Facsimile: 714.427.7799 7 Attorneys for Plaintiff Mind OC, a California nonprofit corporation 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 COUNTY OF ORANGE 10 Case No. 30-2024-01442012-CU-CO-CJC 11 MIND OC, a California nonprofit corporation, 12 Plaintiff. Mind OC's Verified Complaint for: 13 (1) Declaratory Relief v. 14 COUNTY OF ORANGE, a political (2) Permanent Injunction subdivision of the State of California, and 15 DOES 1 through 10, inclusive, **Assigned for All Purposes** 16 Defendant. Judge David J. Hesseltine 17 18 Plaintiff MIND OC, a California nonprofit corporation ("Plaintiff"), hereby alleges as 19 follows: 20 **JURISDICTION AND VENUE** 1. 21 Jurisdiction and venue for this matter properly lies with this Court because the 22 amount in controversy is within the jurisdictional limits of the Superior Court of the State of 23 California for an unlimited civil case. Further, all the parties are located in, reside in, and/or 24 conduct business in Orange County, California. 25 2. This is an unlimited civil case within the jurisdiction of this Court because it 26 involves a dispute between a landlord and tenant in which the value of the property involved 27 exceeds \$25,000. Further, this Court has jurisdiction over this action under Code of Civil 28

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Procedure section 1060 because this action presents an actual controversy between the parties in which Plaintiff seeks a declaration of its rights and duties in the subject premises.

PARTIES

- 3. Plaintiff is now, and at all relevant times was, a nonprofit corporation, organized and existing under the law of the State of California with its principal place of business in Orange County, California.
- 4. Defendant County of Orange (the "County") is now, and at all relevant times was, a political subdivision of the State of California.
- 5. Plaintiff does not know the true names or capacities of the defendants sued as Does 1–10, inclusive, and will amend this complaint to name such defendants as soon as they are ascertained. Plaintiff is informed and believes that the County and defendants named as Does 1-10, and each of them, are in some manner responsible for the events and happenings alleged in this complaint, or otherwise claim an interest in the subject matter of this dispute.

GENERAL ALLEGATIONS

Formation of Be Well OC and the Public Private Partnership

- 6. The lack of affordable care and access to behavioral health services, including mental health and substance use disorder services, are contributing factors to the well-publicized mental health crisis in California and around the country. Orange County is not immune to these issues and the need to provide such services.
- 7. Plaintiff was founded in 2017 with a mission to enhance the behavioral health care system for all Orange County residences through a transformational public and private partnership. Plaintiff was formed at the request of the County's Board of Supervisors and Health Care Agency. Plaintiff is doing business as "Be Well OC".
- 8. Plaintiff is a coalition of behavioral health stakeholders, both in private and public sector, including CalOptima Health, hospital systems, nonprofit, academic and faith-based organizations. Plaintiff's overarching goal is to establish a coordinated, behavioral health service system for all Orange County residents.

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- 9. Plaintiff's mission and goals are accomplished through its joint plan with the County to establish a regional wellness hub for mental health crisis and substance use disorder treatment services. This wellness hub was made possible through an agreement where Plaintiff constructed a 60,000 square foot building (the "Orange Campus") on land owned by the County at 265 South Anita Drive in Orange, California (the "Premises").
- 10. Plaintiff agreed to build the Orange Campus in exchange for a Ground Lease of the Premises for term not less than 60 years (the "Ground Lease"). The Orange Campus is a state-of-the-art behavioral health campus designed to ensure the best possible resources for the community and improve community access to behavioral health services.

The Ground Lease Between Plaintiff and the County

- 11. After construction of the Orange Campus had commenced, but before completion, Plaintiff and the County executed the Ground Lease effective June 11, 2019. The Ground Lease is attached hereto as **Exhibit 1**. The County leased the Premises to Plaintiff for the purposes of designing and constructing the Orange Campus. Plaintiff expended more than \$12 million towards designing and constructing the Orange Campus; and in exchange, the County leased the Premises to Plaintiff for \$1 per year.
- 12. The primary term of the Ground Lease is for 60 years with Plaintiff having an option for three 10-year extensions. Plaintiff leased the Premises "as is" and was responsible for any investigation that the Premises would be suitable for the planned Orange Campus. The Ground Lease was a "triple net lease", meaning that rent paid by Plaintiff is net to the County, and Plaintiff will pay all costs, charges, insurance premiums, taxes, utilities, expenses, and assessments of every kind in connection with the Premises.

The County's Ground Lease Compliance Demands

13. The Orange Campus was fully constructed by Plaintiff and operating for several years when, more than five years after execution of the Ground Lease, the County's Chief Real Estate Officer wrote Plaintiff and demanded compliance with numerous provisions of the lease. The County's letter dated September 6, 2024, is attached hereto as **Exhibit 2**.

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14. The County demanded compliance from Plaintiff within ten (10) days or, pursuant to the Ground Lease Section 11.1.3, there will be a failure of Plaintiff to perform under the Ground Lease constituting an event of default. The County made the following demands for information and documents: (a) Section 4.2.1 (Required Services and Uses), a list of all uses for the

Premises and its operation;

- Premises; (b) Section 4.2.7 (Permits and Licenses), all permits and licenses for the
- (c) Section 5.3 (As-Built Plans), a copy of the As-Built plans for improvements and constructed on the Premises and the final construction costs;
- (d) Section 10.7 (Renter Subleases), the current sublease form approved by the County, all copies of subleases at the premises, and calculations for rent of the Premises including gross square footage of the improvements and calculations of the rentable services;
- (e) Section 15.3 (On-Site Manager), the name of the manager;
- (f) Section 15.4 (Policies and Procedure to be Established by Tenant), the established policies and procedures;
- Section 15.4.5 (Maintenance), the public restroom maintenance schedule; (g) and
- (h) Section 18.19 (Notices), updated contact information.
- 15. The County followed its letter with an email to Plaintiff on September 10, 2024, including additional demands, citing Section 14.1 of the Ground Lease, and demanding the following:
 - (1) accounting of all operating expenses for the 2023 calendar year;
 - (2) accounting of all tax expenses for the 2023 calendar year;
 - (3) calculation of the total usable square footage and billable square footage for the Orange Campus and for each subtenant; and

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(4)	floorplans for the Orange Campus showing square footage of the separate
	suites and common areas and their occupancy.

- 16. Plaintiff requested an additional ten (10) days for a response to the County's new demand, and the County agreed. A copy of the email exchange between Plaintiff and County is attached here as **Exhibit 3**.
- 17. On September 13, 2024, in response to the County's initial demand for compliance with the Ground Lease, Plaintiff responded in writing and provided the requested information and documents. Plaintiff's response was timely provided within ten (10) days of the County's demands. A copy of Plaintiff's September 13, 2024, letter response is attached hereto as **Exhibit** 4. The response references a link to documents delivered through a box.com shared folder.
- On September 19, 2024, in response to the County's email demand for additional 18. information concerning compliance with the Ground Lease, Plaintiff again timely responded in writing to each demand. A copy of Plaintiff's September 19, 2024, letter response is attached hereto as **Exhibit 5**. Documents were again delivered through a box.com shared folder.

The County's Notice of Default to Plaintiff

- 19. After the County's initial scattershot approach to alleging non-compliance with the Ground Lease and demands for numerous records and information, the County narrowed its focus on September 26, 2024, and sent Plaintiff a Notice of Default concerning the Ground Lease. The County's Notice of Default, dated September 26, 2024, is attached hereto as **Exhibit 6**.
- 20. The County claimed in its Notice of Default that Plaintiff was in default of the Ground Lease, alleging only the following four grounds:
 - (1) that the subleases between Plaintiff and subtenants of the Orange Campus were never reviewed and approved by the County as required by Section 10.7.1 of the Ground Lease;
 - that the allowable rent to be paid by subtenants of the Orange Campus to (2) Plaintiff is limited to Plaintiff's recoverable operating costs pursuant to Section 10.7 of Ground Lease—and further that Plaintiff failed to disclose its operating expenses within ten (10) days of demand;

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- (3) that Plaintiff is using the Orange Campus for unauthorized and undisclosed activities in violation of Section 4.2.4 of the Ground Lease; and
- (4) that Plaintiff violated Section 4.4 of the Ground Lease by not maintaining a current registration with the California Office of the Attorney General.

Plaintiff's Response to the County's Notice of Default

- 21. Plaintiff responded on October 4, 2024, countering with additional information and evidence as to each alleged violation of the Ground Lease. Plaintiff's response is attached hereto as **Exhibit 7**. In sum, Plaintiff responded as follows:
 - (1) the County's Chief Real Estate Officer reviewed and approved the subleases at issue and, in any case, the subleases were no surprise to the County because the County was involved in selecting the subtenants and setting rental rates—and the County's knowledge and approval of subleases is further evidence by the County's direct contracts with subtenants requiring they occupy space as subtenants at the Orange Campus;
 - (2) the Ground Lease at Section 10.7 does not cap or limit the rent chargeable to subtenant, to the contrary, the Ground Lease sets a floor stating that the subtenant rents should, in the aggregate, cover Plaintiff's costs of the building and the County will take all reasonable steps to accomplish this objective;
 - (3) Plaintiff disclosed its use of the Premises in response to the County's initial demands, including to support and maintain the "Be Well OC Behavioral Health Service campus", which is expressly permitted by the Ground Lease, as well as employing an on-site manager and personal to supervise the subtenant operations; and
 - **(4)** late registration with the Office of the Attorney General to maintain "current" status as an organization is not an event of default pursuant to the Ground Lease and, by the date of Plaintiff's response, the issue was cured

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and Plaintiff's status showed current.

The County's Reply Regarding Default of the Ground Lease and Request for Meeting

- 22. On October 25, 2024, the County replied to Plaintiff's letter and evidence with counter positions. The County also requested additional information and a meeting to discuss a resolution of issues concerning the Ground Lease. The County's October 25 letter is attached as **Exhibit 8**. On relevant issues, the County's position is as follows:
 - (1) review and approval of the subleases was supposed to have taken place prior to the subleases taking effect, and the County did not approve the subleases by text message from Mr. Miller, the County's Chief Real Estate Officer, and the County needs additional information to determine approval of the subleases, including accounting for revenue, expenses, and projected capital expenditures;
 - (2) rental rates charged by Plaintiff are subject to a standard of reasonableness and the County is without sufficient information to determine whether rates charge by Plaintiff are market rates or reasonably sufficient to cover the cost of the building and Plaintiff's responsibilities;
 - (3) to determine whether the Plaintiff's use of the building is in compliance with the Ground Lease, the County requests additional information it believes was not previously communicated; and
 - (4) the County acknowledges that Plaintiff cured its registration status with the California Office of the Attorney General.
- 23. Plaintiff and the County, through counsel, agreed to a meeting scheduled for October 31, 2024.
- 24. In advance of the meeting, and to help facilitate a resolution, Plaintiff provided the County with additional information including an operating expenses detail, projected capital expenditures, and floorplan showing Plaintiff's use of the premises. Plaintiff's letter dated October 30, 2024, is attached as **Exhibit 9**.

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- 25. Plaintiff and the County, together with their counsel, participated in a meeting concerning the Ground Lease on October 31, 2024.
- 26. At the meeting, the County had not yet reviewed all information provided by Mind OC concerning the Ground Lease, but again requested additional information concerning ongoing compliance. The County's Chief Real Estate Officer, Mr. Miller, downplayed the Ground Lease dispute, saying this type of compliance review is standard with all County facilities.
- Agency ("HCA"). Separate from the issues raised by the County concerning the Ground Lease, HCA proposed changes to the operational structure of the Orange Campus. HCA informed Plaintiff that it intended to propose a new model for operations that included HCA employees occupying space in the Orange Campus. Currently, HCA does not lease any space at the Orange Campus.
- 28. At the request of the County, Mind OC agreed to provide additional information after the meeting, including expenditures for 2024, more specific uses of each space occupied by Plaintiff, and policies and procedures. The County was to propose an alternative operational model for the Orange Campus, including HCA occupying certain space at the building.

Post Meeting Correspondence Between Plaintiff and the County

- 29. On November 5, 2024, the County proposed a radical change in operations at the Orange Campus, which would effectively remove Plaintiff from the building and hand over all operational control to HCA. It has become evident that the County used the Ground Lease, and this dispute, as leverage to push another agenda, which is taking operational control of the Orange Campus and replacing Plaintiff's staff with those of the County. The County's letter dated November 5 is attached as **Exhibit 10**.
- 30. Plaintiff responded to the County's requested operational changes on November 7, 2024, ultimately proposing a joint committee to resolve the operational issues, which is separate and apart from the alleged issues of default under the Ground Lease. Plaintiff's operational response letter dated November 7 is attached as **Exhibit 11**.

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31. Plaintiff, through counsel, sent a separate letter on November 7, 2024, with additional information on compliance with the Ground Lease, including the 2024 expense detail and further detail on occupied space and use of the facility. Plaintiff's compliance with default letter dated November 7 is attached as **Exhibit 12**.

The County's Renewed Notice of Default

- 32. On November 15, 2024, the County sent another letter alleging continuing default of the Ground Lease. The County maintains that the subleases were not approved and are charging rent in excess of that permitted by the Ground Lease. The County demands that subtenants are charged no more than \$2.74 per square foot for the space. The subtenants are currently charged \$3.01 per square foot plus the additional cost of certain direct expenses. Plaintiff has never increased the rent charged to subtenants, and the initial subleases were executed in 2020. The County demanded compliance on or before November 26, 2024, to avoid termination of the Ground Lease. The County's notice of continuing default is attached as **Exhibit 13**.
- 33. The County left Plaintiff no choice but to commence this action and protect its rights under the Ground Lease. The County's attack on the Ground Lease is being used as leverage to change operational control of the Orange Campus from Plaintiff to HCA. However, the County's grounds for terminating the Ground Lease are untenable because (1) the County's Chief Real Estate Officer approved the operative subleases [See Exh. 7.]; and (2) the County has misinterpreted the Ground Lease and manufactured a cap on rent by its own calculation of which expenses are chargeable to subtenants.

FIRST CAUSE OF ACTION

(For Declaratory Relief – Against All Defendants)

- 34. Plaintiff incorporates herein by this reference paragraphs 1 through 33 of this complaint as if set forth in full.
- 35. An actual controversy has arisen and now exists between Plaintiff and the County concerning their respective rights and duties in connection with the Ground Lease.

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- 36. Plaintiff is not in default under the Ground Lease, and any alleged defaults—including but not limited to County's allegations that Plaintiff (1) enacted unauthorized subleases, (2) sought to recover costs from subtenants beyond those permitted by the Ground Lease, or (3) allowed unauthorized uses of the Premises—are either provably false, immaterial, or waived by the County through its express statements and course of conduct over the last four years.
- 37. The County approved the subleases it now complains about and further participated in selecting subtenants, setting rates for subtenants, and contracting with subtenants to occupy the Orange Campus. Plaintiff's use of the Premises, directly or through its subtenants, is consistent with uses permitted by the Ground Lease. And Plaintiff's setting of rental rates for subtenants is consistent with the terms of the Ground Lease.
 - 38. Plaintiff is informed and believes that the County disputes the above contentions.
- 39. Plaintiff desires a judicial determination of the respective rights and duties of Plaintiff and the County arising from the Ground Lease, including, without limitation, that Plaintiff, as tenant under the Ground Lease, is not in default and the Ground Lease is not subject to termination.
- 40. Such a declaration is necessary and appropriate at this time, and under the circumstances, to ascertain the rights and duties of Plaintiff and the County with respect to the Ground Lease.

SECOND CAUSE OF ACTION

(For Permanent Injunction – Against All Defendants)

- 41. Plaintiff incorporates herein by this reference paragraphs 1 through 40 of this complaint as if set forth in full.
- 42. The Ground Lease that is the subject of this action concerns real property (*i.e.* the Premises). Plaintiff contributed more than \$12 million toward the design and construction of the Orange Campus located at the Premises.
- 43. Each parcel of real property is unique, and generally business operated on real property cannot transfer goodwill in the manner or method that personal property may be

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- 44. Plaintiff will suffer irreparable harm if the Ground Lease actually or constructively terminated, or if its business is disrupted. Plaintiff is a unique and thriving nonprofit organization, and earns its livelihood, in part, through subleasing office space in the building subject to the Ground Lease. If the Ground Lease were to be terminated, its business would be disrupted in an irreparable manner, causing injury to ongoing business operations, the stakeholders, employees and members of the community who rely on Plaintiff, and also to the goodwill Plaintiff enjoys in the local community.
- 45. The County should be enjoined and restrained from taking any action to actively or constructively terminating the Ground Lease based on its Notice of Default because any such action would irreparably harm Plaintiff as the tenant under the Lease.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

On the First Cause of Action for Declaratory Relief:

- 1. That the Court enter its judicial declaration regarding the rights, duties and obligations of Plaintiff and the County under the Ground Lease, declaring that Plaintiff is not in default and the County has no grounds for termination; and
 - 2. For such other and further relief as the Court deems just and proper.

On the Second Cause of Action for Permanent Injunction:

- 1. For a preliminary and permanent injunction restraining the County from taking any action to actively or constructively terminate the Ground Lease or evicting Plaintiff as the tenant based on the County's Notice of Default; and
 - 2. For such further and other relief as the Court deems just and proper.

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Dated: November 22, 2024

SNELL & WILMER L.L.P.

By:

Jeffrey M. Singletary Gregory J. Sonnenberg Kina J. Wong Attorneys for Plaintiff Mind OC, a California nonprofit corporation

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SNELL & WILMER LLP. LAW OFFICES 600 ANTON BLVD. SUITE 1400 COSTA MESA, CALIFORNIA 2562667689

VERIFICATION

I, Phillip Franks, declare:

I am Chief Executive Officer of Plaintiff Mind OC in the above-entitled matter. I have read the foregoing Verified Complaint, and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

Executed on November 22, 2024, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Phillip Franks

Phillip Franks

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Exhibit 1



GROUND LEASE

THIS GROUND LEASE ("**Lease**") is made and effective as of the 11th day of June, 2019 ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter called "**County**") and MIND OC, a California nonprofit corporation (hereinafter called "**Tenant**") (each a "**Party**" and collectively, the "**Parties**").

Recitals

- A. County is the fee owner of the Premises (as hereinafter defined).
- B. The County and Tenant in partnership with public and private stakeholders desire to develop a wellness hub at the Premises that serves Orange County residents regardless of payer.
- C. Be Well OC is a coalition of behavioral health stakeholders, both in private and public sector, including CalOptima, hospital systems, nonprofit, academic and faith-based organizations. The overarching goal of Be Well OC is to establish a coordinated, countywide behavioral health service system.
- D. The overarching goal of Be Well OC is to establish a coordinated, countywide behavioral health service system. The Be Well OC Blueprint articulates goals to actualize the Be Well OC vision and includes the establishment of regional Wellness Hubs, such as the facility at Premises. By collaborating with Be Well OC, an opportunity emerged for a public-private partnership to design and develop an approximately 60,000 square foot building at the Premises for the purpose of providing mental health and substance use disorder services for all residents of Orange County.
- E. The County had agreed to lease the Premises to the Tenant for the purposes of designing and constructing a wellness hub.
- F. Tenant has agreed to enter into this Lease based on the premise that, prior to the completion of construction, the County will be party to multiple contracts for services through the Lease term in order to meet the requirements articulated in Section 4.2 herein, and sufficient to occupy the entirety of the rentable services space, which ultimately covers the costs the responsibilities of Tenant herein.
- G. County and Tenant have jointly agreed to enter into this Lease as of the date set forth above.

NOW, THEREFORE, in consideration of the above recitals which are hereby incorporated into this Lease by reference, and mutual covenants and agreements hereinafter contained, County and Tenant mutually agree to the following:

ARTICLE IDEFINITIONS

- 1.1 <u>Definitions</u>: The following defined terms used in this Lease shall have the meanings set forth below. Other terms are defined in other provisions of this Lease, and shall have the definitions given to such terms in such other provisions.
- 1.1.1. "Affiliate" means, with respect to any person (which as used herein includes an individual, trust or entity), which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.
 - 1.1.2. "**Annual Rent**" is defined in <u>Section 3.1</u> below.
- 1.1.3. "**Board of Supervisors**" means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.
- 1.1.4. "**Certificate of Occupancy**" means a temporary or final certificate of occupancy (or other equivalent entitlement, however designated) which entitles Tenant to commence normal operation and occupancy of the Improvements.
- 1.1.5. "Chief Real Estate Officer" means the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.
 - 1.1.6. "City" means the City of Orange, State of California.
- 1.1.7. "Claims" means liens, claims, demands, suits, judgments, liabilities, damages, fines, losses, penalties, costs and expenses (including without limitation reasonable attorney's fees and expert witness costs, and costs of suit), and sums reasonably paid in settlement of any of the foregoing.
- 1.1.8. "Construction Budget" means the detailed line-item budget for all hard and soft costs to be incurred by Tenant in connection with the design and construction of the Initial Improvements and approved by Chief Real Estate Officer, a copy of which is attached hereto as **Exhibit C**, as same may be revised from time to time in accordance with this Agreement.
- 1.1.9. "Construction Drawings" means the set of construction, landscaping and engineering drawings prepared by or for the architect of record for the Initial Improvements, approved by Chief Real Estate Officer and referenced on **Exhibit D** attached hereto, as same may be revised from time to time in accordance with this Agreement.
- 1.1.10. "**Construction Period**" means the period commencing on the Effective Date and ending on the date that is the earlier to occur of (i) the date that the Initial Improvements are deemed complete by County, or (ii) the Outside Date.
- 1.1.11. "**Construction Schedule**" means that certain schedule for construction of the Initial Improvements approved by the Chief Real Estate Officer, a copy of which is attached hereto as **Exhibit B**.

- 1.1.12. "**County**" means the County of Orange, a political subdivision of the State of California, and shall include its Board of Supervisors, its elected and appointed officials, officers, agents, employees, and contractors.
- 1.1.13. "County Parties" means the County and County's Affiliates, agents, employees, members, officers, directors and attorneys.
- 1.1.14. "**County's Fee Interest**" means all of County's interest in the Property, the Premises, this Lease and County's reversionary interest in the Premises and Improvements.
- 1.1.15. "**Effective Date**" means the date that this Lease commences and is defined in the introductory paragraph to this Lease.
 - 1.1.16. "Event of Default" is defined in Section 11.1 below.

1.1.17. "Excluded Financing" shall mean:

- (a) Any Financing Event that occurs in connection with a simultaneous Tenant Ownership Change; or
- (b) With respect to a Financing Event secured by Ownership Interests, any Financing Event, the foreclosure of the security interests of which would not result in an Aggregate Transfer.

1.1.18. "Excluded Transfer" shall mean any of the following:

- (a) A transfer by any direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant's ownership structure) as of the Effective Date or the date on which a Tenant Ownership Change occurred as to the interest transferred, to any other direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family of any direct or indirect partner or member of Tenant who is an individual;
- (b) A transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation:
- (c) A transfer of ownership interests in Tenant or in constituent entities of Tenant (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings, and grandchildren); (ii) to a trust for the benefit of a member of the immediate family of the transferor; (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection is the result of gift, devise, intestate succession, or

operation of law; or (iv) in connection with a pledge by any partners or members of a constituent entity of Tenant to an affiliate of such partner or member;

- (d) A transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, when such entity is a corporation or other entity whose stock and/or securities is/are traded publicly on a national stock exchange or traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;
- (e) A mere change in the form, method, or status of ownership (including, without limitation, the creation of single-purpose entities) as long as the ultimate beneficial ownership remains the same as of the Effective Date, or is otherwise excluded in accordance with subsections (i) (iv) above; or
- (f) Any assignment of the Lease by Tenant to an Affiliate of Tenant in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.
 - 1.1.19. "Extension Term(s)" is defined in Section 2.2.2.
- 1.1.20. "Financing Event" shall mean any financing or refinancing consummated by Tenant or by the holders of Ownership Interests that is not an Excluded Financing, whether with private or institutional investors or lenders, when such financing or refinancing results in any grant, pledge, assignment, transfer, mortgage, hypothecation, grant of security interest, or other encumbrance, of or in all or any portion of (A) the leasehold interest of Tenant's or (B) Ownership Interests.
 - 1.1.21. **"Force Majeure Event"** is defined in Article XIV below.
 - 1.1.22. "**Hazardous Material(s)**" is defined in <u>Section 4.5.1</u> below.
- 1.1.23. "**Improvements**" means and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made or constructed on the Premises. The term Improvements means the Initial Improvements and any replacement improvements constructed in accordance with the terms of this Lease.
- 1.1.24. "includes" means "includes but is not limited to" and "including" means "including but is not limited to."
- 1.1.25. "**Initial Improvements**" means the improvements first constructed by Tenant on the Premises at its sole cost and expense as shown on $\underline{\textbf{Exhibit D}}$ attached hereto and incorporated herein.
- 1.1.26. "**Institutional Lender**" shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company,

commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least \$2,000,000,000 and capital/statutory surplus or shareholder's equity of at least \$500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender). Institutional Lender shall not include any so-called "sovereign wealth funds," unless otherwise approved by County in its sole discretion.

- 1.1.27. "**Interest Rate**" means the highest rate of interest permissible under the Laws not to exceed the rate of twelve percent (12%) per annum.
- 1.1.28. "**Laws**" means all laws, codes, ordinances, statutes, orders and regulations now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity that are binding on and applicable to the Premises and Improvements.
- 1.1.29. "**Lease**" means this Ground Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.
- 1.1.30. "**Lease Year**" means each and every period of twelve (12) consecutive months commencing upon the Effective Date and each and every subsequent anniversary thereof.
 - 1.1.31. "**Leasehold Foreclosure Transferee**" is defined in <u>Section 16.1.2</u> below.
 - 1.1.32. "**Leasehold Mortgage**" is defined in Section 16.1.3 below.
 - 1.1.33. "**Leasehold Mortgagee**" is defined in <u>Section 16.1.4</u> below.
 - 1.1.34. "New Lease" is defined in Section 16.7.1.
 - 1.1.35. "Operating Costs" shall have the meaning set forth in Section 3.5.5.
 - 1.1.36. "**Permitted Transfer**" shall have the meaning set forth in <u>Section 10.3</u>.
 - 1.1.37. "**Permitted Transferee**" shall have the meaning set forth in Section 10.3.
- 1.1.38. "**Person**" includes firms, associations, partnerships, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.
- 1.1.39. "**Premises**" means that certain real property containing approximately 2.10 acres with an address of 265 South Anita Drive in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.
 - 1.1.40. "**Primary Term**" is defined in <u>Section 2.2.1</u>.

- 1.1.41. "**Project**" means the design and construction of the Be Well OC Behavioral Health Services campus located on the Premises.
- 1.1.42. "**Risk Manager**" means the Manager of County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.
- 1.1.43. "**Specifications**" means those certain specifications for the Initial Improvements, prepared by the architect of record for the Initial Improvements, and referenced on **Exhibit E** attached hereto, as same may be revised from time to time in accordance with this Agreement.
 - 1.1.44. "**Sublease**" has the meaning set forth in <u>Section 10.7</u>.
 - 1.1.45. "**Sublessees**" has the meaning set forth in Section 10.7.
 - 1.1.46. "**Taxes**" has the meaning set forth in <u>Section 3.5.2</u>.
- 1.1.47. "**Tenant Ownership Change**" means (a) any transfer by Tenant of the Leasehold Estate or (b) any transaction or series of related transactions that constitute an Aggregate Transfer of twenty five percent (25%) or more of the Beneficial Residual Interests in Tenant, in each case that is not an Excluded Transfer. Any transfer of an Ownership Interest owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies, or trusts shall be treated as a transfer of the Beneficial Residual Interests, the owners of which directly or indirectly own such Ownership Interest.
- 1.1.48. "**Term**" means the full term of this Lease including the Primary Term and any Extension Term(s).
 - 1.1.49. "**Transfer**" has the meaning set forth in <u>Section 10.1.1</u>.
 - 1.1.50. "**Transfer Notice**" has the meaning set forth in <u>Section 10.4</u>.
 - 1.1.51. "Utility Costs" has the meaning set forth in Section 3.5.6.
- 1.1.52. "Work" means Tenant's construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

ARTICLE IILEASE OF PROPERTY

2.1 <u>Lease of Premises</u>. County hereby leases the Premises to Tenant for the Term, and Tenant hereby leases the Premises from County for the Term, subject to the terms and conditions of this Lease.

2.2 **Term.**

- 2.2.1. <u>Primary Term</u>. The "**Primary Term**" of this Lease shall be sixty (60) years and shall commence on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Time on June 4, 2079, unless sooner terminated as a result of non-compliance with any term or condition of this Lease as hereinafter provided.
- 2.2.2. Option to Extend Primary Term. Provided that no Event of Default has occurred and remains uncured, Tenant shall have the option to extend the Primary Term of this Lease under the same terms, covenants and conditions, for three (3) additional, consecutive terms of ten (10) years each ("Extension Term(s)"). Tenant shall exercise each Extension Term by providing the Chief Real Estate Officer with written notice of its election to extend the Primary Term, together with the declared term of such Extension Term, a minimum of thirty (30) days prior to the expiration of the Lease term then in effect. The accumulation of the Primary Term and Extension Term(s) is hereinafter referred to as the "Term."
- 2.3 <u>Access and Common Areas</u>. The Tenant's use of the Premises hereunder also may include the non-exclusive, in common, use of County's driveways for vehicle ingress and egress, pedestrian walkways, and common areas appurtenant to Tenant's Premises created by this Lease, but only as such areas may be identified from time-to-time in writing by the Chief Real Estate Officer.
- 2.4 <u>Termination at End of Term</u>. This Lease shall terminate without need of further actions of any Party at 12:00 midnight Pacific Time on the last day of the Term (as extended pursuant hereto).
- 2.5 <u>Condition of the Premises</u>. Tenant hereby accepts the Premises "AS IS", and acknowledges that the Premises is in satisfactory condition. County makes no warranty, implied or otherwise, as to the suitability of the Premises for Tenant's proposed uses. County makes no covenants or warranties, implied or otherwise, respecting the condition of the soil, subsoil, or any other conditions of the Premises or the presence of Hazardous Materials, nor does County covenant or warrant, implied or otherwise, as to the suitability of the Premises for the proposed development, construction or use by Tenant. County shall not be responsible for any land subsidence, slippage, soil instability or damage resulting therefrom. County shall not be required or obligated to make any changes, alterations, additions, improvements or repairs to the Premises. Tenant shall rely on its own inspection as to the suitability of the Premises for the intended use.

TENANT INITIALS: ___

2.6 <u>Limitations of the Leasehold</u>. This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned

by County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's interest therein.

2.7 <u>Tenant's Investigation</u>. Tenant acknowledges that it is solely responsible for investigating the Premises to determine the suitability thereof for the uses contemplated by Tenant. Tenant further acknowledges by executing this Lease that it completed its investigations of the Premises prior to the execution of this Lease and has made such determinations as Tenant believes may be required under the circumstances.

ARTICLE III RENT

3.1 **Rent**. In consideration of the public benefit afforded by the Project and Tenant's operation on the Premises, the annual rent shall be one dollar (\$1.00) ("**Annual Rent**").

3.2 **Payment of Rent**.

- 3.2.1. <u>Annual Rent Generally</u>. Annual Rent shall be prepaid to County concurrent with the execution of this Lease for the Primary Term.
- 3.3 <u>Triple Net Rent</u>. It is the intent of the parties that all Rent shall be absolutely net to County and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due during the Term or any extension thereof as a result of Tenant's use and occupancy of the Premises. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall County be obligated or required to make any payment of any kind whatsoever or be under any other obligation or liability under this Lease except as expressly provided herein.
- 3.4 <u>Insufficient Funds</u>. If any payment of Rent or other fees made by check is returned due to insufficient funds, or otherwise, more than once during the Term, County shall have the right to require Tenant to make all subsequent Rent payments by cashier's check, certified check or ACH automatic debit system. All Rent shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Tenant or receipt by County of a lesser amount than the Rent due shall be deemed to be other than on account of the Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and County shall accept such check or payment without prejudice to County's right to recover the balance of said Rent or pursue any other remedy in this Lease.

3.5 **Additional Rent**.

3.5.1. <u>Additional Rent</u>. During the Term, Operating Costs and Utility Costs, (as defined below), taxes (including but not limited to Real Estate Taxes and Equipment Taxes, as defined below), expenses, and obligations of every kind relating to the Premises shall be paid or discharged by Tenant as additional rent ("Additional Rent"). Tenant may pay, under protest, any

impositions, and/or contest and defend against same. Any imposition rebates shall belong to Tenant.

- 3.5.2. <u>Taxes</u>. During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "Taxes" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special County thereof, as against any legal or equitable interest of County in the Premises or any payments in lieu of taxes required to be made by County, including, but not limited to, the following:
- (a) Any assessment, tax, fee, levy, improvement County tax, charge or similar imposition in substitution, partially or totally, of any assessment, tax, fee, levy, charge or similar imposition previously included within the definition of Taxes. It is the intention of Tenant and County that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of "**Taxes**" for the purpose of this Lease.
- (b) Any assessment, tax, fee, levy, charge or similar imposition allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the city, county, state or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;
- (c) Any assessment, tax, fee, levy, charge or similar imposition upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, including any possessory interest tax levied on the Tenant's interest under this Lease:
- (d) Any assessment, tax, fee, levy, charge or similar imposition by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

The definition of "**Taxes**," including any additional tax the nature of which was previously included within the definition of Taxes, shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring as a result of a sale or otherwise.

3.5.3. <u>Contest of Taxes</u>. Tenant shall have the right to contest, oppose or object to the amount or validity of any Taxes or other charge levied on or assessed against the Premises and/or Improvements or any part thereof; provided, however, that the contest, opposition or objection must be filed before the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Tenant

has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to County a good and sufficient undertaking in an amount specified by County and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Tenant of the tax, assessments or charge, together with any fines, interest, penalties, costs and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Tenant's contest, opposition or objection to such tax, assessment or other charge.

- 3.5.4. Payment by County. Should Tenant fail to pay any Taxes required by this Article III to be paid by Tenant within the time specified herein, and if such amount is not paid by Tenant within ten (10) days after receipt of County's written notice advising Tenant of such nonpayment, County may, without further notice to or demand on Tenant, pay, discharge or adjust such tax, assessment or other charge for the benefit of Tenant. In such event Tenant shall promptly on written demand of County reimburse County for the full amount paid by County in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.
- 3.5.5. <u>Operating Costs</u>. Tenant shall pay all Operating Costs during the Term prior to delinquency. As used in this Lease, the term "**Operating Costs**" shall mean all charges, costs and expenses related to the Premises, including, but not limited to, management, operation, maintenance, overhaul, improvement or repair of the Improvements and/or the Premises.
- 3.5.6. <u>Utility Costs</u>. Tenant shall pay all Utility Costs during the Term prior to delinquency. As used in this Lease, the term "Utility Costs" shall include all charges, surcharges and other costs of installing and using all utilities required for or utilized in connection with the Premises and/or the Premises or the Improvements, including without limitation, costs of heating, ventilation and air conditioning for the Premises, costs of furnishing gas, electricity and other fuels or power sources to the Premises, and the costs of furnishing water and sewer services to the Premises.

ARTICLE IV USE OF PREMISES

4.1 <u>Permitted Use of Premises</u>. Tenant may use the Premises for the construction, development, entitlement, operation, maintenance, replacement and repair of the Improvements permitted hereunder. Tenant agrees not to use the Premises for any other purpose nor to engage in or permit any other activity within or from the Premises, except as set forth herein with the prior written approval of the Chief Real Estate Officer, which approval may be granted or withheld in the sole discretion of the Chief Real Estate Officer.

4.2 **Required and Optional Facilities and Services.**

4.2.1. <u>Required Services and Uses</u>. County's primary purpose for entering into this Lease is to promote the development of the Improvements consistent with this Lease. In furtherance of that purpose, Tenant shall construct and during the entire Term operate and maintain

the Improvements in a manner consistent with the Laws and for one or more of the following uses (the "**Permitted Uses**"):

- (a) Be Well OC Behavioral Health Services campus;
- (b) Wellness and Social Services:
- (c) Crisis Stabilization Unit;
- (d) Substance Use Disorder Intake and Referral
- (e) Withdrawal Management
- (f) Crisis Residential
- (g) Substance Use Disorder and Co-Occurring Residential Treatment;

and/or

- (h) other uses which are in compliance with applicable Laws and approved by the Chief Real Estate Officer in writing from time to time.
- 4.2.2. <u>Ancillary Services and Uses</u>. Subject to the prior written approval of Chief Real Estate Officer, Tenant may provide those additional services and uses which are ancillary to and compatible with the required services and uses herein.
- 4.2.3. <u>Additional Services</u>. Tenant may establish, maintain, and operate such other additional services as Tenant and Chief Real Estate Officer may jointly from time to time determine to be reasonably necessary for the use of the Premises and which are otherwise permitted by Law.
- 4.2.4. <u>Restricted Use</u>. The services and uses listed in this <u>Article IV</u>, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises except as approved in writing by the Chief Real Estate Officer as set forth herein, which approval may be granted or withheld in the sole discretion of the Chief Real Estate Officer.
- 4.2.5. <u>Continuous Use</u>. During the Term, Tenant shall continuously conduct Tenant's business in the Premises in the manner provided under this Lease and shall not discontinue use of the Premises for any period of time except as permitted in advance and in writing by the Chief Real Estate Officer.
- 4.2.6. <u>Alcohol Restrictions</u>. Tenant may not sell beer, wine or alcoholic beverages on the Premises.
- 4.2.7. <u>Permits and Licenses.</u> Tenant shall be solely responsible to obtain, at its sole cost and expense, any and all permits, licenses or other approvals required for the uses permitted herein and shall maintain such permits, licenses or other approvals for the entire Term.

- 4.3 <u>Nuisance</u>: Waste. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises and Improvements or any part thereof. Tenant shall not commit or allow to be committed any waste in or upon the Premises or Improvements and shall keep the Premises and the Improvements thereon in good condition, repair and appearance.
- 4.4 <u>Compliance with Laws</u>. Tenant shall not use or permit the Premises or the Improvements or any portion thereof to be used in any manner or for any purpose that violates any applicable Laws in any material respect. Tenant shall have the right to contest, in good faith, any such Laws, and to delay compliance with such Laws during the pendency of such contest (so long as there is no material threat to life, health or safety that is not mitigated by Tenant to the satisfaction of the applicable authorities). County shall cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to County, and Tenant shall indemnify, defend and protect the Premises and County from Tenant's failure to observe or comply with the contested Law during the pendency of the contest.

4.5 **Hazardous Materials**.

- 4.5.1. <u>Definition of Hazardous Materials</u>. For purposes of this Lease, the term "**Hazardous Material**" or "**Hazardous Materials**" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including, without limitation, the County acting in its governmental capacity, the State of California or the United States government.
- 4.5.2. <u>Use of Hazardous Materials</u>. Except for those Hazardous Materials which are customarily used in connection with any permitted use of the Premises and Improvements under this Lease (which Hazardous Materials shall be used in compliance with all applicable Laws), Tenant or Tenant's employees, agents, independent contractors or invitees (collectively "**Tenant Parties**") shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this Section shall include the subsurface soil and ground water).

4.5.3. Indemnification for Hazardous Materials.

(a) Tenant agrees to include in any and all subleases: "To the fullest extent permitted by law, sublessee hereby agrees to indemnify, hold harmless, protect and defend the County (with attorneys acceptable to County), its Board, elected officials, officers, employees, agents, independent contractors, and the Premises, from and against any and all liabilities, losses, damages (including, but not limited, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing and diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of

Hazardous Materials on, into, from, under or about the Premises by sublessee or sublessee parties."

- (b) Tenant hereby agrees to indemnify, hold harmless, protect and defend the County (with attorneys acceptable to County), its Board, elected officials, officers, and employees from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses, arising out of the Tenant's use, generation, storage or release of Hazardous Materials in Tenant's operations on the Premises.
- 4.6 <u>Access by County</u>. County reserves the right for County and County's authorized representatives to enter the Premises at any reasonable time during business hours, in order to (i) determine whether Tenant is complying with Tenant's obligations hereunder, or (ii) enforce any rights given to County under this Lease. County shall take all necessary measures not to unreasonably interfere with Tenant's or any subtenant's business at the Premises in exercising its rights under this Section.

ARTICLE V CONSTRUCTION OF IMPROVEMENTS

5.1 <u>Construction of Improvements.</u>

- 5.1.1. <u>Initial Improvements</u>. Tenant shall construct the Initial Improvements in a good and workmanlike matter, in substantial accordance with the Construction Contract, Construction Drawings, Specifications, Construction Schedule, Construction Budget (as such documents may be revised from time to time in accordance with this Lease) and all required permits and all applicable Laws.
- 5.1.2. Changes to Construction Documents. Tenant shall not make any material changes to the Construction Drawings, Specifications, Construction Schedule, Construction Budget, the contracts with the Construction and Architect (collectively, the "Construction Documents") without the prior written approval of the Chief Real Estate Officer. All requests for approval of changes to the Construction Documents shall be submitted by Tenant to the Chief Real Estate Officer together with a reasonably detailed explanation of the reasons for the requested change and any impact that such change may have on the Construction Budget and/or Construction Schedule, if any. If the Chief Real Estate Officer approves the requested change, then Tenant shall provide the Chief Real Estate Officer with a copy of the approved revised Construction Documents and the Tenant shall be obligated to complete the Work in accordance with such revised Construction Documents.
- 5.1.3. <u>Construction Schedule.</u> Tenant shall use commercially reasonable efforts to (i) commence construction of the Initial Improvements on or before a date to be established by mutual agreement with the County and Tenant, and (ii) substantially complete construction of the Initial Improvements, as evidenced by issuance of Certificates of Occupancy for all buildings included in the Initial Improvements, on or before a date to be established by mutual agreement with the County and Tenant. Following commencement of construction of the Initial Improvements, Tenant shall diligently continue performance of the Work through completion thereof in accordance with the Construction Schedule, as same may be amended from

time to time with the prior written approval of the Chief Real Estate Officer. Tenant acknowledges that a principal inducement to County to enter into this Lease, is the timely commencement, performance and completion by Tenant of the construction of the Initial Improvements.

- 5.1.4. <u>Preconditions</u>. No Work for development of the Initial Improvements shall be commenced, and no building or other materials shall be delivered to the Premises, until Tenant has satisfied the following preconditions:
- (a) If not previously obtained prior to the execution of this Lease, Tenant shall have received all applicable entitlements and approvals for the Project from the applicable government agencies with jurisdiction over the Premises;
- (b) Written notice shall have been given by Tenant to County of the proposed commencement of construction of the Premises or the delivery of construction materials in order to permit County to take all necessary actions under California Civil Code section 3094, including posting of a notice of non-responsibility at the Premises;
- (c) Tenant shall have provided to County (i) evidence that Tenant has entered into architect and construction contracts in the forms approved by Chief Real Estate Officer and with a general contractor ("Contractor") and architect ("Architect") licensed by the State of California, and who is adequately insured for the purposes of performing under this Lease, and approved by Chief Real Estate Officer, and (ii) the written agreement of the Contractor and Architect that, in the event this Lease is terminated for any reason, then at County's election, Architect and/or Contractor, as applicable, will recognize County as the assignee of the contracts with the Architect and/or Contractor, as applicable, and County may, upon such election, assume such contract with credit for payments made prior thereto; and
- (d) Tenant shall have delivered to County certificates of insurance evidencing that Tenant and Contractor have acquired all the insurance that they are obligated to carry pursuant to Section 8.1.
- 5.1.5. <u>Utilities</u>. To the extent not already constructed, Tenant, at no cost to County, shall construct or cause to be constructed all water, gas, heat, light, power, air conditioning, telephone, and other utilities and services supplied to and/or used on the Premises at Tenant's sole cost and expense for the purposes of conducting Tenant operations thereon. All taxes, connection fees, or service fees related to Tenant's operations on the Premises shall be Tenant's responsibility and shall be paid prior to the delinquency.
- 5.1.6. <u>Construction Funding</u>. Prior to commencement of construction of the Initial Improvements, Tenant shall provide to County evidence reasonably satisfactory to County of funding available to Tenant that is sufficient to pay for any and all hard and soft costs to be incurred by Tenant in connection with the design and construction of the Initial Improvements, as set forth in the Construction Budget. County, through the Chief Real Estate Officer, shall have the right to approve or disapprove of Tenant's choice of Contractor and Architect for the construction of the Project. County's approval shall not be unreasonably withheld.

In addition, if a Certificate of Occupancy has not been received one (1) year prior to the Outside Date, then, as of the Outside Date, Tenant at County's written request shall cause all construction

funding to be placed in an account whereby County has equal right of access to said funds should County exercise its right to do so. If a Certificate of Occupancy has not been received on the Outside Date, subject to Force Majeure Delays, then County shall have the right, in its discretion, to assume sole and absolute control of the construction funds to effect the completion of construction, upon written notice to the Tenant and a fifteen (15) day cure period. In this event, the Tenant shall provide to County all documents and records pertaining to the construction funds, and the accounting of such funds, within three (3) business days of request by County.

- Compliance with Laws and Permits. Tenant shall cause all Improvements made by Tenant to be constructed in compliance with all applicable Laws, including but not limited to all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof. No permit, approval, or consent given hereunder by County or County, in its governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations, or have any effect on approval rights that the County may have in its governmental capacity. Lessee acknowledges that all construction performed by or on behalf of Lessee per the terms of this Lease shall be governed by, and performed in accordance with, all Applicable Laws, including without limitation, and to the extent applicable, the California Labor Code and the provisions thereunder concerning the payment of prevailing wage, e.g. Section 1773 of the Labor Code of the State of California), and if applicable Tenant shall comply with the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications. following The rates are available at the website: http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm from the Director of the State Department of Industrial Relations. Tenant shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates at all times for all improvements or modifications to be completed for County within the Premises. Tenant shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.
- 5.1.8. **Reports**. Not less than quarterly from the commencement of construction of the Initial Improvements, Tenant shall provide County with written construction status reports in the form of AIA No. G702, augmented by oral reports if so requested by County.
- 5.1.9. <u>Certificate of Occupancy</u>. Tenant shall provide County with a copy of the Certificate of Occupancy of the Initial Improvements promptly following issuance thereof.

5.1.10. Mechanic's Liens.

(a) <u>Payment of Liens</u>. Tenant shall pay or cause to be paid the total cost and expense of all "Work of Improvement," as that phrase is defined in the California Mechanics' Lien law in effect and as amended from time to time. Tenant shall not suffer or permit to be enforced against the Premises or Improvements or any portion thereof, any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work of improvement, however it may arise. Tenant may, however, in good faith and at Tenant's sole cost and expense contest the validity of any such asserted lien, claim, or demand, provided Tenant (or the Contractor

or subcontractor, as applicable) has furnished the release bond (if required by County or any construction lender) required in California Civil Code §3143 (or any comparable statute hereafter enacted for providing a bond freeing the Premises from the effect of such lien claim). In the event a lien or stop-notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Tenant shall either:

- (1) Record a valid Release of Lien, or
- (2) Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien, or
- (3) Post such security or provide such alternative financial arrangements as shall be required by Tenant's title insurer to insure over such lien or stop-notice, or
- (4) Should Tenant fail to accomplish either of the three optional actions above within 30 days after Tenant receives notice of the filing of such a lien or stop-notice, it shall constitute an Event of Default hereunder.
- (b) <u>Indemnification</u>. Tenant shall at all times indemnify, defend with counsel approved in writing by County and save County harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees and costs.
- (c) <u>Protection against Liens</u>. County shall have the right to post and maintain on the Premises any notices of non-responsibility provided for under applicable California law. During the course of construction, Tenant shall obtain customary mechanics' lien waivers and releases. Upon completion of the construction of any Improvements, Tenant shall record a notice of completion in accordance with applicable law. Promptly after the Improvements have been completed, Tenant shall (or shall cause Contractor to) record a notice of completion as defined and provided for in California Civil Code Section 3093.
- (d) <u>County's Rights</u>. If Tenant (or the Contractor or subcontractor, as applicable) does not cause to be recorded the bond described in California Civil Code §3143 or otherwise protect the Premises and Improvements under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim, and if Tenant fails to stay the execution of judgment by lawful means or to pay the judgment, County shall have the right, but not the duty to pay or otherwise discharge, stay or prevent the execution of any such judgment or lien or both. Upon any such payment by County, Tenant shall immediately upon receipt of written request therefor by County, reimburse County for all sums paid by County under this paragraph together with all County's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.
- 5.1.11. **No Responsibility**. Any approvals by County with respect to any Improvements shall not make County responsible for the Improvement with respect to which

approval is given, or the construction thereof. Tenant shall indemnify, defend and hold County harmless from and against all liability and all claims of liability (including, without limitation, reasonable attorneys' fees and costs) arising during the term of this Lease for damage or injury to persons or property or for death of persons arising from or in connection with such Improvement or construction.

5.1.12. <u>Outside Date</u>. If Tenant fails to comply with its obligations under this <u>Section 5.1.3</u> including, without limitation, commencing and completing the Work of the Initial Improvements by June 5, 2024, subject to Force Majeure Delays, then such failure shall be deemed an Event of Default.

5.2 **Ownership of Improvements**.

- 5.2.1. **During Term**. Title to all Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the entire Term of this Lease, until the expiration or earlier termination thereof. The Parties agree for themselves and all persons claiming under them that the Improvements are real property.
- 5.2.2. <u>Upon Expiration of Term</u>. All Improvements on the Premises at the expiration or earlier termination of the Term of this Lease shall, without additional payment to Tenant, then become County's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to County in a well-maintained condition consistent with the requirements of this Lease, taking into account reasonable wear and tear and the age of the Improvements.
- 5.3 "AS-BUILT" Plans. Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the Chief Real Estate Officer a complete set of reproducibles and two sets of prints of "As-Built" plans and a magnetic tape, disk or other storage device containing the "As-Built" plans in a form usable by County, to County's satisfaction, on County's computer aided mapping and design ("CAD") equipment. CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be included on the disk or CD ROM. In addition, Tenant shall furnish Chief Real Estate Officer copy of the final construction costs for the construction of such improvements.

ARTICLE VI

REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

6.1 <u>Maintenance by Tenant</u>. Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and any and all Improvements now or hereafter constructed and installed on the Premises in good order, condition and repair (*i.e.*, so that the Premises does not deteriorate more quickly than its age and reasonable wear and tear would otherwise dictate) and in a safe and sanitary condition and in compliance with all applicable Laws in all material respects.

- Interior Improvements, Additions and Reconstruction of Improvements. Following completion of construction of the Initial Improvements, Tenant shall not commence construction of any work or series of works on the Improvements, without the prior written approval of the Chief Real Estate Officer. Tenant shall provide the Chief Real Estate Officer with written notice of all such intended work, which notice shall include copies of (I) all required permits, (II) architectural, engineering and landscaping drawings for such work, (III) Tenant's contracts with its general contractor and architect for such work, (IV) Tenant's budget for such work, (V) the construction schedule for such work, and (VI) such other documentation and information regarding such intended work as the Chief Real Estate Officer may reasonably request. Notwithstanding the foregoing, following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time, without the Chief Real Estate Officer's prior written consent, to perform the following alterations or renovations to the Improvements ("Permitted Alterations"): (i) to make any interior improvements to the Improvements required for tenant improvements under any approved Sublease to the extent same are consistent with the Permitted Uses; and (ii) following any damage to or destruction of the Improvements, to restore and reconstruct the Improvements (interior and exterior) in accordance with the Construction Drawings (whether or not required to do so under Article VII). Tenant shall perform all work authorized by the Chief Real Estate Officer pursuant to this Section at its sole cost and expense and in compliance with all applicable Laws in all material respects.
- Reconstruction. Following the completion of construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, repairs, maintenance, demolition, improvements or reconstruction of any kind shall require the prior written consent of the County, which consent shall not be unreasonably conditioned, delayed or withheld and may require Board of Supervisors approval. Tenant shall perform all work authorized by this Section at its sole cost and expense and in compliance with all applicable Laws in all material respects.
- Requirements of Governmental Agencies. At all times during the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall: (i) make all alterations, improvements, demolitions, additions or repairs to the Premises and/or the Improvements required to be made by any law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; (ii) observe and comply in all material respects with all Laws now or hereafter made or issued respecting the Premises and/or the Improvements (subject to Tenant's right to contest such Laws in accordance with Section 4.4); (iv) indemnify, defend and hold County and County, the Premises and the Improvements free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from Tenant's failure to comply with and perform the requirements of this Article VI.
- 6.5 <u>County Obligations</u>. Tenant specifically acknowledges and agrees that County shall not have any obligations with respect to the maintenance, alteration, improvement, demolition, addition or repair of any Improvements, except only as specifically provided in this Lease to the contrary.
- 6.6 <u>Accessibility Disclosure</u>. In compliance with its disclosure obligations under Section 1938 of the California Civil Code, County hereby notifies Tenant that, as of the Effective

Date, the Property has not been inspected by a Certified Access Specialist (as referred to in Section 1938 of the California Civil Code). As such, County hereby advises Tenant as follows:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

If Tenant elects to have a Certified Access Specialist ("CASp") inspect the Property, then Tenant shall: (a) provide County with prior written notice of such election and mutually agree with County on the arrangements for the time and manner of the CASp inspection, (b) promptly give County a copy of the resulting report (the "CASp Report") upon receipt, (c) be responsible, at its sole cost and expense, for the cost of the CASp Report and for completing any repairs or modifications that are necessary to correct violations of construction-related accessibility standards noted in the CASp Report and any additional work necessitated thereby (all of which Tenant shall complete as expeditiously as possible following the issuance of the CASp Report and in compliance with this Lease (including without limitation Section 5), unless County elects at its option to perform such work at Tenant's expense), and (d) not disclose and cause its partners, members, officers, directors, managers, shareholders, employees, agents, brokers and attorneys to not disclose the CASp Report to any person other than County (and except as necessary for Tenant to complete the repairs and corrections of violations noted in the CASp Report) without first obtaining the prior written consent of County. Tenant's obligation to indemnify County, County, and the County Parties under Section 8.2 above shall apply equally to Claims arising out of any CASp investigation initiated by Lessee, including as a result of any violations discovered thereby.

ARTICLE VII DAMAGE AND RESTORATION

Damage and Restoration. In the event the whole or any part of the Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage, with any changes made by Tenant to comply with then applicable Laws and with any upgrades or improvements that Tenant may determine in its reasonable discretion. If Tenant desires to change the use of the Premises following such casualty, then Tenant may make appropriate changes to the Premises to

accommodate such changed use after approval of such change of use by the County pursuant to <u>Article IV</u> above. This Article shall not apply to cosmetic damage or alterations.

- 7.2 **Restoration**. In the event of any restoration or reconstruction pursuant to this Section, all such work performed by Tenant shall be constructed in a good and workmanlike manner according to and in conformance with the laws, rules and regulations of all governmental bodies and agencies and the requirements of this Lease applicable to the construction of the Initial Improvements.
- Application of Insurance Proceeds. If following the occurrence of damage or destruction to the Premises or Improvements, Tenant is obligated to or otherwise elects to restore the Premises and Improvements pursuant to this Article VII, then all proceeds from the insurance required to be maintained by Tenant on the Premises and the Improvements shall be applied to fully restore the same, and any excess proceeds shall be paid to Tenant and any deficit in necessary funds plus the amount of any deductible shall be paid by Tenant. If the insurance proceeds are insufficient to pay all costs to fully restore the Improvements, Tenant shall pay the deficiency and shall nevertheless proceed to complete the restoration of the Improvements and pay the cost thereof. Upon lien free completion of the restoration, any balance of the insurance proceeds remaining over and above the cost of such restoration shall be paid to Tenant.
- 7.4 **Exclusive Remedies**. Notwithstanding any destruction or damage to the Premises and/or the Improvements, Tenant shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this <u>Article VII</u>. County and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this <u>Article VII</u>.

ARTICLE VIII INSURANCE AND INDEMNITY

8.1 **Tenant's Required Insurance**.

- 8.1.1. Tenant agrees to purchase, or require subtenants to purchase, all required insurance at Tenant's expense and to deposit with Chief Real Estate Officer certificates of insurance, including all endorsements required herein, necessary to satisfy Chief Real Estate Officer that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with Chief Real Estate Officer during the entire term of this Lease. It shall constitute an Event of Default hereunder if Tenant's insurance coverage is terminated and not reinstated within ten (10) business days after notice from County of such termination.
- 8.1.2. Tenant agrees that it shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Chief Real Estate Officer; rent however shall not be suspended. In no cases shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in

the interim, an insurance binder as adequate evidence of insurance. Tenant also agrees that upon cancellation, termination, or expiration of Tenant's insurance, Chief Real Estate Officer may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Chief Real Estate Officer reinstates the Lease.

- 8.1.3. If Tenant fails to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, County and Tenant agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to Tenant, said material breach shall permit Chief Real Estate Officer to take whatever steps are necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Premises until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Tenant further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from Chief Real Estate Officer's action.
- 8.1.4. All contractors and subcontractors performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Tenant and limits of insurance as described in Section 8.1.6 (e), Section 8.1.6 (f) and Section 8.1.6 (g). Tenant shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by County from the Tenant under this Lease. It is the obligation of the Tenant to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by Tenant through the entirety of this Lease and be available for inspection by Chief Real Estate Officer at any reasonable time.
- 8.1.5. All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Tenant's current audited financial report. If Tenant's SIR is approved, Tenant, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:
 - 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Tenant's, its agents, employee's or subcontractor's performance of this Lease, Tenant shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
 - 2) Tenant's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
 - 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Tenant's SIR provision shall be interpreted as though the Tenant was an insurer and the County was the insured.

If the Tenant fails to maintain insurance acceptable to the COUNTY for the full term of this Lease, the COUNTY may terminate this Lease

- 8.1.6. All policies of insurance required under this <u>Article VIII</u> must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com).** It is preferred, but not mandatory, that the insurer must be licensed to do business in the state of California.
- (a) If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the carrier's performance and financial ratings.
- (b) If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

(c) The policy or policies of insurance maintained by the **TENANT DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits	
Builder's Risk (during the Construction Period) naming retained General Contractor	Project value and no coinsurance provision.	
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate	
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence	
Workers' Compensation	Statutory Minimum	
Employers' Liability Insurance	\$1,000,000 per occurrence	

(d) The policy or policies of insurance maintained by the **TENANT AFTER CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$5,000,000 per occurrence
Including Sexual Misconduct	\$5,000,000 aggregate

Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	100% of the Replacement Cost Value and no coinsurance provision

(e) The policy or policies of insurance maintained by the **TENANT'S CONTRACTOR and ARCHITECH-ENIGNEER DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Professional Liability (all design	\$5,000,000 per occurrence
professionals providing services in connection with construction, renovation or alteration of Improvements)	\$5,000,000 aggregate
Commercial General Liability	\$10,000,000 per occurrence \$10,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Pollution Liability including NODS	\$2,000,000 per claims made or per occurrence
Contractor's Pollution Liability including Non- Owned Disposal Site (NODS) Coverage	\$2,000,000 per claims made or per occurrence

Contractor shall provide a construction policy providing coverage for the full project value and no coinsurance provision. The policy shall provide coverage for all perils excluding earthquake, and flood. Contractor is responsible for any deductible amount. The County of Orange shall be named

as a Loss Payee as its financial interests may appear. This shall be evidenced by a Loss Payee endorsement which shall accompany the Certificate of Insurance.

The Builder's Risk policy shall not be required to cover any tools, equipment, or supplies, unless such tools, equipment, or supplies are part of the Work being constructed. The CONTRACTOR shall be responsible for securing and maintaining appropriate insurance on any tools, equipment, or supplies that are not part of the work being constructed.

The COUNTY and the Contractor waive all rights against each other and the subcontractors, subsubcontractors, officers, and employees of each other, and the Contractor waives all rights against COUNTY's separate contractors, if any, and their subcontractors, sub-subcontractors, officers and employees for damages caused by fire or other perils to the extent paid by the Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. The Contractor shall require of its subcontractors and sub-subcontractors by appropriate agreements, similar waivers, each in favor of all other parties enumerated in the preceding sentence

(f) The policy or policies of insurance maintained by the **TENANT'S SUB-CONTRACTOR DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Contractor's Pollution Liability including NODS (Required if involved in pollution remediation.)	\$1,000,000 per claims made or per occurrence

(g) The policy or policies of insurance maintained by the **TENANT'S CONTRACTOR AFTER CONSTRUCTION** shall provide the minimum limits and coverage as set forth below when performing maintenance and minor work after the building is in operation:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate

Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence

8.1.7. **Required Coverage Forms**.

- (a) The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.
- (b) The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.
- 8.1.8. **Required Endorsements**. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:
 - 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state, As Required by Lease.
 - 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the TENANT's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
 - 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed.04/13) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85). (Pertains to contractors and subcontractors performing major construction). Contractors shall maintain Products and Completed Operations coverage for ten (10) years following completion of construction.

The Contactors Pollution Liability and Pollution Liability policies shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds.

- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by County shall be excess and non-contributing.
- (a) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against County, its elected and appointed officials, officers, agents and employees.
- (b) All insurance policies required by this Lease shall waive all rights of subrogation against County, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.
- (c) The Commercial Property Building policy shall include County of Orange as a Named Insured. A Certificate of Insurance shall be submitted as evidence of this requirement. The Builders' Risk policy shall be endorsed to include County as a Loss Payee. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.
- (d) Tenant shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Lease, upon which the County may suspend or terminate this Lease.
- (e) The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).
- (f) If Contractor's Pollution Liability and Pollution Liability are claims-made policies, Contractor shall agree to maintain coverage for five (5) years following completion of the construction. If Contractor's Professional Liability is a claims-made policy, Contractor shall agree to maintain coverage for ten (10) years following the completion of construction. Products and Completed Operations coverage shall be maintained for ten (10) years following the completion of construction.
- (g) Insurance certificates should be forwarded to County address provided in Section 18.19 below or to an address provided by Chief Real Estate Officer. Tenant has ten (10) business days to provide adequate evidence of insurance or it shall constitute an Event of Default.
- (h) County expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by Chief Real Estate Officer as appropriate to adequately protect COUNTY.
- (i) Chief Real Estate Officer shall notify Tenant in writing of changes in the insurance requirements consistent with <u>subsection (h)</u> above. If Tenant does not deposit copies of certificates of insurance and endorsements with Chief Real Estate Officer incorporating

such changes within thirty (30) days of receipt of such notice, it shall constitute an Event of Default.

- (j) The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.
- **Indemnification**. Tenant hereby releases and waives all claims and recourse 8.2 against County and County, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease except claims arising from the concurrent active or sole negligence of County, their respective Boards, officers, agents, and employees. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by County), and hold harmless, County and County, their respective Boards, elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the property described herein, and/or Tenant's exercise of the rights under this Lease, except for liability arising out of the concurrent active or sole negligence of County or County, their respective Boards, elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If County and/or County are named as co-defendant(s) in a lawsuit, Tenant shall notify County and County of such fact and shall represent County and County in such legal action unless County and/or County undertakes to represent itself as co-defendant in such legal action, in which event, Tenant shall pay to County and/or County their respective litigation costs, expenses, and attorneys' fees. If judgment is entered against County and/or County and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and/or County and Tenant, County and Tenant agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Tenant acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor.

Tenant, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

Tenant's Initials

8.3 <u>Damage to Tenant's Premises</u>. County shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Tenant, of Tenant's employees, invitees, customers, or of any other person in or about the Premises or the Improvements caused by or resulting from any peril which may affect the Premises or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from

or into any part of the Premises or the Improvements, whether such damage or injury results from conditions arising upon the Premises or from other sources.

ARTICLE IX CONDEMNATION

9.1 **Definitions**.

- 9.1.1. "Condemnation" means (i) the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute, whether by legal proceedings or otherwise, by a Condemnor (hereinafter defined), and (ii) a voluntary sale or transfer to a Condemnor, either under threat of condemnation or while condemnation legal proceedings are pending.
- 9.1.2. "<u>Date of Taking</u>" means the later of (i) the date actual physical possession is taken by the Condemnor; or (ii) the date on which the right to compensation and damages accrues under the law applicable to the Premises.
- 9.1.3. "<u>Award</u>" means all compensation, sums or anything of value awarded, paid or received for a Total Taking, a Substantial Taking or a Partial Taking (hereinafter defined), whether pursuant to judgment or by agreement or otherwise.
- 9.1.4. "Condemnor" means any public or quasi-public authority or private corporation or individual having the power of condemnation.
- 9.1.5. "<u>Total Taking</u>" means the taking by Condemnation of all of the Premises and all of the Improvements.
- 9.1.6. "Substantial Taking" means the taking by Condemnation of so much of the Premises or Improvements or both that one or more of the following conditions results: (i) The remainder of the Premises would not be economically and feasibly usable by Tenant; and/or (ii) A reasonable amount of reconstruction would not make the Premises and Improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises were being used prior to the Condemnation; and/or (iii) The conduct of Tenant's business on the Premises would be materially and substantially prevented or impaired.
- 9.1.7. "Partial Taking" means any taking of the Premises or Improvements that is neither a Total Taking nor a Substantial Taking.
- 9.1.8. "Notice of Intended Condemnation" means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of Condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a Condemnation summons and complaint on a party hereto. The notice is considered to have been received when a party receives from the Condemnor a notice of intent to condemn, in writing, containing a description or map reasonably defining the extent of the Condemnation.

9.2 **Notice and Representation**.

- 9.2.1. <u>Notification</u>. The party receiving a notice of one or more of the kinds specified below shall promptly notify the other party of the receipt, contents and dates of such notice: (i) a Notice of Intended Condemnation; (ii) service of any legal process relating to the Condemnation of the Premises or Improvements; (iii) any notice in connection with any proceedings or negotiations with respect to such a Condemnation; (iv) any notice of an intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of Condemnation.
- 9.2.2. <u>Separate Representation</u>. County and Tenant each have the right to represent its respective interest in each Condemnation proceeding or negotiation and to make full proof of his claims. No agreement, settlement, sale or transfer to or with the Condemnor shall be made without the consent of County and Tenant. County and Tenant shall each execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to Condemnation.

9.3 Total or Substantial Taking.

- 9.3.1. **Total Taking**. On a Total Taking, this Lease shall terminate on the Date of Taking.
- 9.3.2. <u>Substantial Taking</u>. If a taking is a Substantial Taking, Tenant may, by notice to County given within ninety (90) days after Tenant receives a Notice of Intended Condemnation, elect to treat the taking as a Total Taking. If Tenant does not so notify County, the taking shall be deemed a Partial Taking.
- 9.3.3. <u>Early Delivery of Possession</u>. Tenant may continue to occupy the Premises and Improvements until the Condemnor takes physical possession. At any time following Notice of Intended Condemnation, Tenant may in its sole discretion elect to relinquish possession of the Premises to County before the actual Taking. The election shall be made by notice declaring the election and agreeing to pay all Rent required under this Lease to the Date of Taking. Tenant's right to apportionment of or compensation from the Award shall then accrue as of the date that the Tenant relinquishes possession.
- 9.3.4. Apportionment of Award. On a Total Taking all sums, including damages and interest, awarded for the fee or leasehold or both shall be distributed and disbursed as finally determined by the court with jurisdiction over the Condemnation proceedings in accordance with applicable law. Notwithstanding anything herein to the contrary, Tenant shall be entitled to receive compensation for the value of its leasehold estate under this Lease including its interest in all Improvements, personal property and trade fixtures located on the Premises, its relocation and removal expenses, its loss of business goodwill and any other items to which Tenant may be entitled under applicable law.

9.4 **Partial Taking**.

9.4.1. Effect on Rent. On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises and Improvements, except that the Annual Rent (including any adjustments thereto) shall be equitably reduced based on the impact (if any) of such

Partial Taking on the operating income and revenue derived from Tenant's operations and the decrease (if any) in the market value of the leasehold interest.

- 9.4.2. **Restoration of Improvements**. Promptly after a Partial Taking, Tenant shall repair, alter, modify or reconstruct the Improvements ("**Restoring**") so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased.
- 9.4.3. **Apportionment of Award**. On a Partial Taking, County shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, personal property and trade fixtures taken.
- 9.5 <u>Waiver of Termination Rights</u>. Both parties waive their rights under Section 1265.130 of the California Code of Civil Procedure (and any successor provision) and agree that the right to terminate this Lease in the event of Condemnation shall be governed by the provisions of this <u>Article IX</u>.

ARTICLE X

ASSIGNMENT. SUBLETTING AND ENCUMBERING

- 10.1 <u>General</u>. Except for Permitted Transfers (and except that Tenant may acquire a Leasehold Mortgage as set forth in <u>Article XVII</u>), Tenant shall not assign (including an assignment by operation of law), transfer or encumber this Lease, or any interest therein, nor sublet the Premises or Improvements. Tenant may assign or sublet this Lease without County's consent to a Permitted Transferee (as defined below). All other assignments and transfers shall require the consent of County, which may not be unreasonably withheld, conditioned or delayed.
- 10.1.1. Except for the Leasehold Mortgage allowed by <u>Article XVII</u> and transfers to a Permitted Transferee, any mortgage, pledge, hypothecation, encumbrance, transfer, sublease of Tenant's entire Lease interest or assignment (hereinafter in this section referred to collectively as "**Transfer**") of Tenant's interest in the Premises, or assignment of any part or portion thereof, shall first be approved in writing by Chief Real Estate Officer, unless otherwise provided herein. Failure to obtain Chief Real Estate Officer's required written approval of a Transfer will render such Transfer void. Occupancy of the Premises by a prospective transferee, sublessee, or assignee before approval of the Transfer by County shall constitute an Event of Default.
- 10.1.2. Except for a Permitted Transfer (as defined in <u>Section 10.3</u>, below), if Tenant hereunder is a corporation, limited liability company, an unincorporated association or partnership, the Transfer of any stock or interest in said corporation, company, association, partnership in the aggregate exceeding 25% shall be deemed a Transfer within the meaning of this Lease that requires County written consent.
- 10.1.3. Should County consent to any Transfer, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease nor be construed as County's consent to any further Transfer. Such terms, covenant or conditions shall apply to each and every Transfer hereunder and shall be severally binding upon each and every party thereto. Any

document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

- 10.1.4. This Section shall not be interpreted to disallow or require County approval for space leases (subleases of less than Tenant's entire Lease interest) or concession agreements within the Improvements between the Tenant and a sub-tenant, which are consistent with the approved uses under this Lease.
- 10.2 <u>Leasehold Mortgage</u>. Tenant shall not mortgage, encumber or hypothecate County's Fee Interest under any circumstances.
- 10.3 <u>Permitted Transfers</u>. County's consent shall not be required for any of the following transfers (each a "Permitted Transfer" and each party to whom a Permitted Transfer may be made is a "Permitted Transferee"): (i) an Excluded Transfer, or (ii) any encumbrance to a Leasehold Mortgagee; provided, however, that in each case (1) Tenant shall notify County of such Transfer at least sixty (60) days prior to the consummation of such Transfer, and shall provide County with complete information regarding the transferee and information evidencing that the Transfer falls within the parameters of this paragraph, and (2) if such Transfer involves an assignment of Tenant's rights under this Lease, Tenant or such transferee shall provide County with a written assumption of Tenant's obligations under this Lease executed by such transferee in a form approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease.
- Transfer Procedure. If Tenant desires at any time to enter into a Transfer for 10.4 which County's consent is required hereunder, Tenant shall provide County with written notice ("Transfer Notice") at least ninety (90) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name and address of the proposed transferee, (ii) the nature of the Transfer (i.e., whether an assignment, sublease or encumbrance), (iii) the proposed effective date of the Transfer, (iv) income statements and "fair market" balance sheets of the proposed transferee for the two (2) most recently completed fiscal or calendar years (provided however, if the proposed transferee is a newly formed entity and has not been in existence for such two (2) year period, the financial statements submitted shall be those if its principals), (v) a detailed description of the proposed transferees qualifications and experience that demonstrates the transferee meets the criteria for a Tenant as established by this Lease, and (vi) a bank or other credit reference. Thereafter, Tenant shall furnish such supplemental information as County may reasonably request concerning the proposed transferee. County shall, no later than ninety (90) days after County's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether County gives or withholds its consents to the proposed Transfer, and (ii) if County withholds its consent to the proposed Transfer, setting forth a detailed explanation of County's grounds for doing so. If County consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the County's approval and after execution of a consent to assignment, in a form approved by the County.
- 10.5 <u>Liability of Transferors/Transferees for Lease Obligations</u>. Each permitted assignee of this Lease shall assume in writing all of Tenant's obligations under this Lease. All

transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms and provisions of this Lease. Any transferor of any interest in this Lease or the Premises or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms and provisions of this Lease. The County may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

10.6 <u>Conditions of Certain County Approvals</u>.

- 10.6.1. County may withhold consent to a Transfer at its and absolute sole discretion if any of the following conditions exist:
 - (a) An Event of Default exists under this Lease.
- (b) The prospective Transferee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.
- (c) The construction required of Tenant as a condition of this Lease has not been completed.
- (d) All the material terms, covenants, and conditions of the Transfer that are relevant to the County approval of the Transfer have not been revealed in writing to County.
- (e) The processing fee required by County and set out below has not been paid to County by delivery of said fee to County.
- (1) A fee of \$3,000 shall be paid to County for processing each consent to Transfer submitted to County as required by this Lease. This processing fee shall be deemed earned by County when paid and shall not be refundable.
- (2) If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged. Such fee shall be increased every ten years during the Lease term based on any increase in the CPI Index. Under no circumstances shall the fee decrease.
- 10.7 Renter Subleases. The Parties anticipate that, prior to the completion of construction, the County will be party to multiple contracts for services through the Lease term in order to meet the requirements articulated in Section 4.2 herein, and sufficient to sublease from the Tenant the entirety of the rentable services space within the Premises. It is intended that the subleases with these service providers will, in the aggregate, cover the costs of the building and the responsibilities of Tenant herein. County will take all reasonable steps to accomplish forming such contracts for services.

Notwithstanding the foregoing, the Parties recognize that the Tenant will be subleasing space to certain renters, including but not limited to the aforementioned service providers (the "Sublessee(s)"), within the Premises or portions of the Premises (each a "Sublease").

10.7.1. Tenant may enter into subleases with Sublessees of office premises within the Project to Sublessees that have been approved in advance by County in accordance with the requirements of this Section; provided, however, that the Sublease or series of Subleases conforms, in all material respects, with the form of sublease previously approved by Chief Real Estate Officer in writing. Prior to entering into any Sublease for which Tenant requires Chief Real Estate Officer's prior written approval pursuant to this Section, Tenant shall provide Chief Real Estate Officer with a Sublease, signed by Tenant and the proposed Sublessee, and setting forth the terms upon which such Sublessee has agreed to sublease space within the Premises from Tenant. The approval by the Chief Real Estate Officer shall not be unreasonably withheld, conditioned or delayed and shall be given (or not) within thirty (30) days of receipt thereof. If Chief Real Estate Officer disapproves of a proposed Sublease and/or Sublessee, then he shall provide Tenant with a written notice of disapproval setting forth specific reasons for such disapproval.

10.7.2. Tenant shall cause all Subleases to include at a minimum:

- (a) an express acknowledgment by the Sublessee that the Sublease is subject and subordinate to this Lease, and that the Sublessee is bound by all applicable provisions of this Lease, and that the County is not responsible for any performance or breach by Tenant, including the return of any Security Deposit.
- (b) Sublessee shall maintain insurance naming County as an additional insured to Sublessee's liability policies.
- (c) Sublessee's obligations with respect to Hazardous Materials will be consistent with those of Tenant under this Lease, including the requirement that Sublessee indemnifies County and County for any failure of Sublessee to comply with such obligations.
- (d) Sublessee shall agree to attorn to County pursuant to <u>Section 10.8</u> below.
- (e) The Sublease shall specifically provide for Tenant's (in its capacity as sublessor) remedies pursuant to California Civil Code Sections 1951.2 and 1951.4 without modifications detrimental to Tenant.
- (f) The term of any Sublease shall not extend beyond the expiration of the Term of this Lease.
- 10.7.3. All Subleases must be for Permitted Uses, and shall expressly provide that they are subject and subordinate to this Lease, and the Sublessee is bound by all provisions of this Lease applicable to the use and occupation of the portion of the Premises subleased to Sublessee.
- 10.7.4. Except pursuant to Subleases as provided in this Section, Tenant shall not suffer or permit the use or occupancy of all or any portion of the Premises by any person or entity, without the prior approval of County, which shall not be unreasonably withheld, conditioned, or delayed.

- 10.7.5. If requested in writing by County, Tenant will provide County with a copy of any rules, regulations or other standards of operation developed by Tenant and distributed to Sublessees and Tenants.
- 10.7.6. If Tenant obtains any security deposits under any sublease, all such funds shall be kept in a separate deposit account (and not comingled with any other accounts of Tenant) and shall be used only for the purposes set forth in the applicable sublease governing the use of such deposit.
- 10.8 <u>Attornment</u>. All subleases entered into by Tenant will be subject to all terms and conditions of this Lease, and each sublease will specifically state this fact. If this Lease terminates for any reason, all Sublessees will recognize County as the successor to Tenant under their respective subleases, and will render performance thereunder to County as if the sublease were executed directly between County and the Sublessees; provided, however, County agrees that, upon such termination, so long as a Sublessee has entered into an approved form sublease and is not in default under its sublease, County agrees to be bound by all of the terms and conditions of each such sublease. All subleases entered into by Tenant will contain the following provision:

If the underlying Lease and the leasehold estate of tenant thereunder is terminated for any reason, Sublessee will attorn to the County and recognize County as lessor under this sublease; provided, however, County agrees that so long as Sublessee has entered into an approved form sublease and the Sublessee is not in default under the sublease, County agrees to be bound by all the terms and conditions of this sublease.

In the event this Lease is terminated for any reason, all Sublessees will be liable to County for their payment of rents and fees and will be subject to all the provisions and terms contained in their subleases.

In the event of a termination of this Lease as a result of the default of Tenant hereunder, County hereby agrees that any sublease or other occupant of the Improvements now or hereafter located on the Premises shall not be disturbed so long as any such sublease or other occupant is not then in default under the terms of the applicable sublease or other agreement after the expiration of applicable notice and cure periods. At Tenant's request, County hereby agrees to provide a non-disturbance agreement in the form attached hereto as **Exhibit H** to any such subtenant or occupant within five (5) business days of written request therefor.

10.9 <u>Conditions Deemed Reasonable</u>. Tenant acknowledges that each of the conditions to a Transfer, and the rights of County set forth in this <u>Article X</u> in the event of a Transfer is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

ARTICLE XI DEFAULT AND REMEDIES

- 11.1 **Event of Default**. Each of the following events shall constitute an "**Event of Default**" by Tenant:
- 11.1.1. <u>Miscellaneous Events of Default</u>. Any event or circumstance expressly referenced to elsewhere in this Lease as an "Event of Default."
- 11.1.2. <u>Failure to Pay</u>. Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of three (3) business days after written notice thereof from County to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq*.
- 11.1.3. <u>Failure to Perform</u>. The failure or inability by Tenant to observe or perform any of the provisions of this Lease to be observed or performed by Tenant, other than specified in <u>Sections 11.1.2</u> or <u>11.1.4</u> herein, where such failure shall continue for a period of ten (10) days after written notice thereof from County to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 *et. seq.*; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in default if (i) Tenant commences such cure within said ten (10) days, (ii) thereafter diligently prosecutes such cure to completion, and (iii) completes such cure to County's reasonable satisfaction within sixty (60) days from the date that Tenant first received written notice of the default.
- 11.1.4. <u>Abandonment</u>. The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant; provided, however, vacancy of a portion of the Premises due to remodeling, reconstruction or as a result of casualty, condemnation, tenant vacancies or other factors beyond the reasonable control of Tenant shall not constitute a default hereunder.

11.1.5. Assignments.

- (a) The making by Tenant of any general assignment for the benefit of creditors;
- (b) A case is commenced by or against Tenant under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within sixty (60) days of such commencement;
- (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or

- (d) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of Tenant in and to the Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the County hereunder or by law; provided, it shall be lawful for the County to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and Tenant and its creditors (other than County) shall have no further claim thereon or hereunder.
- 11.2 <u>County's Remedies</u>. If an Event of Default occurs and is continuing, County shall have the following remedies in addition to all rights and remedies provided by law or equity to which County may resort cumulatively or in the alternative:
- 11.2.1. <u>Termination of Lease</u>. County shall have the right to terminate this Lease and all rights of Tenant hereunder including Tenant's right to possession of the Premises.
- 11.2.2. <u>Continue Lease in Effect</u>. Continue this Lease in effect without terminating Tenant's right to possession even though Tenant has breached this Lease and abandoned the Premises and to enforce all of County's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided, however, that County may at any time thereafter elect to terminate this Lease for such previous breach by notifying Tenant in writing that Tenant's right to possession of the Premises has been terminated.
- 11.2.3. Removal of Personal Property Following Termination of Lease. County shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 11.2.1 above, to re-enter the Premises and, subject to applicable law, to remove Tenant's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant in accordance with applicable California law.
- 21.3 County's Right to Cure Tenant Defaults. If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, County may at its election, but is not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be additional rent payable by Tenant on County's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render County liable for any loss or damage resulting from the same.
- 11.4 <u>County's Default</u>. County shall not be considered to be in default under this Lease unless Tenant has given County written notice specifying the default, and either (i) as to monetary defaults, County has failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, County has failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Tenant's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) period shall

be extended automatically so long as County commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by County under this Lease against Annual Rent owing by Tenant under this Lease. Additionally, Tenant's sole remedy for any monetary default shall be towards the County's interest in the property and not to any other assets. Any and all claims or actions accruing hereunder shall be absolutely barred unless such action is commenced within six (6) months of the event or action giving rise to the default.

- 11.5 <u>Waiver by County</u>. No delay or omission of County to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by Tenant hereunder. The acceptance by County of rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by Tenant of any provision thereof, other than the failure of Tenant to pay the particular rent or sum accepted, regardless of County's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of County's right to exercise any remedy available to County by virtue of such breach or default. No act or thing done by County or County's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by County.
- 11.6 <u>Interest</u>. Any installment or rent due under this Lease or any other sums not paid to County when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.
- 11.7 <u>Waiver by Tenant</u>. Tenant's waiver of any breach by County of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.
- Tenant Covenants and Agreements. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expenses and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant, then in addition to any other remedies provided herein, County may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by County on Tenant's behalf shall not give rise to any responsibility of County to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by County in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by County shall be deemed to be additional rent hereunder and shall be paid by Tenant with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

ARTICLE XII ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either County or Tenant (the "requesting party"), the other party (the "responding party") shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either County or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender).

ARTICLE XIII FORCE MAJEURE

Unless otherwise specifically provided herein, the period for performance of any nonmonetary obligation by either party shall be extended by the period of any delay in performance caused by Acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Premise from being operated in accordance with this Lease, or other reasons beyond the reasonable control of County, Tenant, or their respective agents or representatives (collectively, "Force Majeure Events"). In no event, however, shall Force Majeure Events include the financial inability of a party to this Lease to pay or perform its obligations hereunder. Further, nothing herein shall extend the time for performance of any monetary obligation owing under this Lease (including Tenant's obligation to pay Rent owing hereunder).

ARTICLE XIV RECORDS AND ACCOUNTS

14.1 **Records**. Tenant shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

ARTICLE XV OPERATIONAL OBLIGATIONS OF TENANT

15.1 **Standards of Operation**.

- 15.1.1. Tenant shall operate the Premises in a manner reasonably comparable to other comparable facilities or businesses within the County of Orange. Tenant shall at all times during the Term provide adequate security measures to reasonably protect persons and property on the Premises, including a patrol of all areas in the Premises for the purpose of preserving order and preventing theft, vandalism, or other improper or unlawful use of the Premises or any of the facilities.
- 15.1.2. The ultimate purpose of this Lease is the design and construction of a Be Well OC Behavioral Health Services campus. Accordingly, Tenant covenants and agrees to operate said Premises fully to accomplish said purposes and not to abandon or vacate the Premises at any time.
- 15.1.3. The facilities on the Premises shall be operated during normal business hours, subject to any temporary interruptions in operations or closures due to ordinary maintenance and repair and any Force Majeure Event, defined in <u>Article XIV</u> above.
- 15.2 **Protection of Environment**. Tenant shall take all reasonable measures available to:
- 15.2.1. Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Tenant's facilities.
- 15.2.2. Maintain a reasonable noise level on the Premises so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.
- 15.2.3. Prevent the light fixtures of the Premises from emitting light that could negatively affect the operation of cars, boats, or airplanes in the area.
- 15.2.4. Prevent all pollutants from Tenant's operations on the Premises from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any applicable permits. Tenant and all of Tenant's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter the municipal storm drain system (including but not limited to curbs and gutters that are part of the street systems), or directly impact receiving waters (including but not limited to rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean), except as may be permitted by any applicable permits.
- 15.2.5. The County may enter the Premises and/or review Tenant records at any time to assure that activities conducted on the Premises comply with the requirements of this Section.

- 15.3 On-Site Manager. Tenant shall employ a competent manager who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order for the Premises. Such person shall be vested with the authority of Tenant with respect to the supervision over the operation and maintenance of the Premises, including the authority to enforce compliance by Tenant's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Tenant expressly agrees that any notice herein required to be served upon Tenant may, at the option of County or Chief Real Estate Officer, be personally served upon said Manager and that such service shall have the same force and effect as service upon Tenant. Tenant shall notify County in writing of the name of the Manager currently so employed as provided in Section 18.19 of this Lease.
- 15.4 Policies and Procedures to be Established by Tenant. Prior to the occupancy of the Premises by any Sublessee, Tenant shall submit to Chief Real Estate Officer proposed policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and uses required by this Lease ("Policies and Procedures"). Should Chief of Real Estate, upon review and conference with Tenant, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, Tenant, upon written notice from Chief of Real Estate, shall modify said schedules or procedures to the satisfaction of said Chief of Real Estate. Said Policies and Procedures shall include, but are not limited to, the following:
- 15.4.1. Tenant shall at all times retain active, qualified, competent, and experienced personnel to supervise Tenant's operation and to represent and act for Tenant.
- 15.4.2. Tenant shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.
- 15.4.3. Tenant shall maintain a close check over attendants and employees to ensure the maintenance of a high standard of service. Tenant shall replace any employee whose conduct is detrimental to the best interests of the public.
- 15.4.4. Tenant shall keep the Premises adequately and properly lighted after daylight hours and at such other times as public safety or convenience requires.
- 15.4.5. Tenant shall establish an appropriate maintenance schedule for all public rest rooms on said Premises to be inspected for cleanliness and supplies several times each day and shall maintain the highest standards of cleanliness therein.

ARTICLE XVI LEASEHOLD MORTGAGES

- 16.1 **<u>Definitions</u>**. The following definitions are used in this Article (and in other Sections of this Lease):
- 16.1.1. "<u>Leasehold Estate</u>" means Tenant's leasehold estate in and to this Lease, including Tenant's rights, title and interest in and to the Premises and Improvements, or any applicable portion thereof or interest therein.

- 16.1.2. "<u>Leasehold Foreclosure Transferee</u>" means any person (which may, but need not be, a Leasehold Mortgagee) which acquires the Leasehold Estate pursuant to a foreclosure, assignment in lieu of foreclosure or other enforcement of remedies under or in connection with a Leasehold Mortgage.
- 16.1.3. "<u>Leasehold Mortgage</u>" means and includes a mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by an Institutional Lender by which Tenant's Leasehold Estate is mortgaged to secure a debt or other obligation, including a purchase money obligation.
- 16.1.4. "<u>Leasehold Mortgagee</u>" means an Institutional Lender which is the holder of a Leasehold Mortgage.
- 16.1.5. "<u>Tenant</u>" shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to County; and (iii) any further assignee, transferee or subtenant of any of the parties listed in (ii) who is or becomes directly and primarily liable to County.
- 16.2 <u>Tenant's Right to Encumber Leasehold Estate; No Right to Encumber County's Fee Interest</u>. Tenant shall not encumber the Leasehold Estate without the prior written consent of the Chief Real Estate Officer and then only with a Leasehold Mortgage that complies with the following requirements:
- 16.2.1. the principal balance of the debt secured by such Leasehold Mortgage(s) (as of the date recorded) shall not exceed (i) 80% of the costs of the Improvements if recorded during Construction Period, or (ii) 80% of the Leasehold Estate Value if recorded after the Annual Rent Date in each case, as determined in accordance with the appraisal report prepared for the applicable Leasehold Mortgagee in connection with such Leasehold Mortgage(s);
 - 16.2.2. the Leasehold Mortgage shall not encumber County's Fee Interest;
- 16.2.3. the Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of County hereunder, except as otherwise provided in this Lease;
- 16.2.4. nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the County's Fee Interest to any Leasehold Mortgage; and
- 16.2.5. in the event of any conflict between the provisions of this Lease and the provisions of any such trust Leasehold Mortgage, the provisions of this Lease shall control.
- Mortgage shall, prior to making any Leasehold Mortgage, provide County with notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgage. At the time of notice, Tenant shall furnish to Chief Real Estate Officer a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, Tenant or

any Leasehold Mortgagee shall notify County of any change in the identity or address of such Leasehold Mortgagee. County shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this <u>Article XVI</u>.

- Defaults. County, upon delivery to Tenant of any notice of a default under this Lease or a matter as to which County may predicate or claim a default, will endeavor to concurrently deliver a copy of such notice to each Leasehold Mortgagee. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee shall have the same cure period for such default (or act or omission which is the subject matter of such notice) that is provided to Tenant under this Lease, to commence and complete a cure of such default (or act or omission which is the subject matter of such notice). County shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.
- 16.5 <u>Limitation on County's Termination Right</u>. Any Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by a Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Tenant instead of by a Leasehold Mortgagee.
- 16.5.1. Should any Event of Default under this Lease occur (other than an Event of Default relating to the non-payment of Rent), any Leasehold Mortgagee shall have sixty (60) days after receipt of written notice from County setting forth the nature of such Event of Default, within which to cure the Event of Default; provided that in the case of an Event of Default which cannot with due diligence be cured within such sixty-day (60) period, the Leasehold Mortgagee shall have the additional time reasonably necessary to accomplish the cure, provided that (i) such Leasehold Mortgagee has commenced the curing within such sixty (60) days and (ii) thereafter diligently prosecutes the cure to completion. If the Event of Default is such that possession of the Premises may be reasonably necessary to cure the Event of Default, the Leasehold Mortgagee shall have a reasonable additional time after the expiration of such sixty (60) day period within which to cure such Event of default, provided that (I) the Leasehold Mortgagee shall have fully cured any Event of Default in the payment of any monetary obligations of Tenant under this Lease within such sixty (60) day period and shall continue to pay currently such monetary obligations as and when the same are due and (II) the Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings seeking such acquisition within such period, or prior thereto, and is diligently prosecuting any such proceedings.
- 16.5.2. Any Event of Default under this Lease which is not susceptible to remedy by a Leasehold Mortgagee shall be deemed to be remedied if (i) within sixty (60) days after receiving written notice from County setting forth the nature of such Event of Default, or prior

thereto, a Leasehold Mortgagee shall have acquired Tenant's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings seeking such acquisition, (ii) such Leasehold Mortgagee shall have diligently prosecuted such proceedings to completion, and (iii) such Leasehold Mortgagee shall have fully cured all Events of Default relating to the payment and performance of any monetary or other obligations of Tenant hereunder which do not require possession of the Premises within such sixty (60)-day period and shall thereafter continue faithfully to perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, such Leasehold Mortgagee shall have performed all other obligations of Tenant hereunder as and when the same are due.

- 16.5.3. If a Leasehold Mortgagee is prohibited by any stay, order, judgment or decree issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings and said Leasehold Mortgagee diligently seeks release from or reversal of such stay, order, judgment or decree, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Leasehold Mortgagee shall have fully cured any Event of Default relating to the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same are due and prior to delinquency.
- 16.6 <u>Continuation of Lease</u>. So long as any Leasehold Mortgagee is complying with <u>Sections 16.5.1</u>, <u>16.5.2</u> and <u>16.5.3</u> above, then upon the acquisition of Tenant's Leasehold Estate by a Leasehold Foreclosure Transferee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.
- 16.6.1. Tenant's encumbrance of its Leasehold Estate with a Leasehold Mortgage shall not constitute an assignment or other Transfer under Article X or otherwise, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder; provided, however, that any Leasehold Foreclosure Transferee shall be deemed to be an assignee or transferee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the effective date on which such Leasehold Foreclosure Transferee acquires title to the Leasehold Estate, but only for so long as such purchaser or assignee is the owner of the leasehold estate.
- 16.6.2. Any Leasehold Mortgagee (or its designee) that becomes a Leasehold Foreclosure Transferee, upon acquiring title to Tenant's Leasehold Estate, without causing a default under this Lease and without obtaining County's consent, shall have a one-time right to assign the Leasehold Estate to an assignee having a net worth equal to or greater than two (2) times the value of the leasehold estate created by this Lease and senior management that individually have more than ten (10) years of experience managing, maintaining and operating developments like that on the Premises. Upon such assignment, the Leasehold Foreclosure Transferee shall automatically be released of all obligations thereafter accruing under this Lease, provided that, substantially concurrently with such assignment, the assignee delivers to County a written agreement assuming Tenant's obligations under the Lease thereafter accruing. Any subsequent

Transfers occurring after the one-time assignment permitted under this Section shall be subject to Article X.

16.7 Leasehold Mortgagee's Right to New Lease.

16.7.1. Notwithstanding anything in this Lease to the contrary, if this Lease is terminated for any reason (including by reason of any Event of Default or rejection or disaffirmance of this Lease pursuant to bankruptcy law or any other law affecting creditor's rights) without the prior written consent of all Leasehold Mortgagees, other than by reason of a Total Taking, County shall give prompt notice thereof to any Leasehold Mortgagee of whom County has received notice pursuant to Section 16.3 above. Such Leasehold Mortgagee (subject to Section 16.8 below if more than one Leasehold Mortgagee then exists) shall then have the right, exercisable by written notice to County at any time within thirty (30) days following receipt of such notice, to require County to enter into a new lease of the Premises with such Leasehold Mortgagee, or its designee, which new lease ("New Lease") shall commence as of the date of such termination of this Lease and shall continue for the remainder of the scheduled term of this Lease, at the same Rent that is payable under this Lease, and on the same terms, covenants, conditions and agreements that are contained in this Lease (including any extension options, purchase options and rights of first refusal, if any, provided for in this Lease), and subject to the rights of any residents under resident agreements or other subtenants then in valid occupancy of the Premises and Improvements and further subject to any then existing senior Leasehold Mortgagees, provided that, substantially concurrently with the delivery of such notice requiring County to enter into a New Lease, Leasehold Mortgage shall pay to County all Rent or any other amounts payable by Tenant hereunder which is then due and shall commence and proceed with diligence to cure all nonmonetary defaults under this Lease, other than those nonmonetary defaults which are personal to the foreclosed tenant and impossible for the Leasehold Mortgagee to remedy.

16.7.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 16.7.1 above, then County and the Leasehold Mortgagee (or its designee) shall promptly prepare and enter into a written New Lease, but until such written New Lease is mutually executed and delivered, this Lease shall be deemed to constitute the New Lease, as modified by this Section 16.7, and Leasehold Mortgagee (or its designee) shall, from and after the giving of notice pursuant to Section 16.7.1, (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to County all Rent accruing under the New Lease as it becomes owing, and (iii) perform or cause to be performed all of the other covenants and agreements under the New Lease on Tenant's part to be performed. Further, at such time as the written New Lease is mutually executed and delivered, Leasehold Mortgagee (or its designee) shall pay to County its reasonable expenses, including reasonable attorneys' fees, incurred in connection with the termination of this Lease and with the preparation, execution and delivery of such written New Lease.

16.7.3. In the event that County receives any net income (*i.e.*, gross income less gross expenses on a cash basis), if any, from the Premises and Improvements during any period that County may control the same, then the tenant under the New Lease shall be entitled to an offset against the next Rent then owing under the New Lease in the amount of such net income received by County except to the extent that it was applied to cure any default of Tenant.

16.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and claims of the tenant under the New Lease.

Multiple Leasehold Mortgages. If more than one Leasehold Mortgagee shall make a written request upon County for a New Lease in accordance with the provisions of Section 16.7, then such New Lease shall be entered into pursuant to the request of the Leasehold Mortgagee holding the Leasehold Mortgage that is junior in priority to all other requesting Leasehold Mortgagees, provided that: (a) any junior Leasehold Mortgagee whose Leasehold Mortgage was made in violation of any restrictions on junior encumbrances included in any bona fide senior Leasehold Mortgage made in good faith and for value shall be disregarded for purposes of Sections 16.7 and 16.8 and shall have no rights under this Lease; (b) all Leasehold Mortgagees that are senior in priority shall have been paid all amounts then due and owing under such Leasehold Mortgagees, plus all expenses, including attorneys' fees, incurred by such senior Leasehold Mortgagees in connection with any default by Tenant under this Lease and in connection with the New Lease; (c) the new Tenant will assume, in writing, all of the obligations of the mortgagor(s) under all senior Leasehold Mortgages, subject to any nonrecourse or other exculpatory provisions (if any) therein contained; (d) the New Lease shall contain all of the same provisions and rights in favor of and for the benefit of Leasehold Mortgagees thereof as are contained in this Lease; and (e) all senior Leasehold Mortgagees (at no expense to such senior Leasehold Mortgagees or County) shall have received endorsements or other assurances satisfactory to such senior Leasehold Mortgagees from their respective title insurers insuring that their respective senior Leasehold Mortgages (and any assignment of rents and other security instruments executed in connection therewith) will continue as a Leasehold Mortgage with respect to such New Lease in the same manner and order of priority of lien as existed with respect to this Lease; and thereupon the leasehold estate of the new tenant under the New Lease shall be subject to the lien of each of the senior Leasehold Mortgages in the same manner and order of priority of lien as existed with respect to this Lease.

In the event that not all of the foregoing provisions shall have been satisfied by or with respect to any such junior Leasehold Mortgagee, the Leasehold Mortgagee next senior in priority to such junior Leasehold Mortgagee shall have paramount rights to the benefits set forth in Section 16.7 above, subject nevertheless to the provisions hereof respecting the senior Leasehold Mortgagees, if any. In the event of any dispute as to the respective senior and junior priorities of any such Leasehold Mortgages, the certification of a national title company licensed in the State of California shall be conclusively binding on all parties concerned. Should there be a dispute among Leasehold Mortgagees as to compliance with the foregoing provisions, County may rely on the affidavit of the most senior Leasehold Mortgagee as to compliance by any junior Leasehold Mortgagee. County's obligation to enter into a New Lease with any junior Leasehold Mortgagee shall be subject to the receipt by County of evidence reasonably satisfactory to it that the conditions set forth in clauses (a), (b) and (c) in the paragraph immediately above in this Section have been satisfied with respect to each senior Leasehold Mortgagee.

The right of a senior Leasehold Mortgagee under <u>Section 16.7</u> above to request a New Lease may, notwithstanding any limitation of time set forth above in this <u>Section 16.7</u>, be exercised by the senior leasehold Mortgagee within twenty (20) days following the failure of a junior Leasehold Mortgagee to have exercised such right, but not more than sixty (60) days after the giving of notice by County of termination of this Lease as set forth in <u>Section 16.7</u> above.

If a junior Leasehold Mortgagee shall fail or refuse to exercise the rights set forth in this <u>Section 16.8</u>, any senior Leasehold Mortgagee, in the inverse order of the seniority of their respective liens, shall have the right to exercise such rights subject to the provisions of this Lease.

Notwithstanding anything herein to the contrary, County shall have no duty or obligation to resolve any disputes or conflicting demands between Leasehold Mortgagees. In the event of any conflicting demands made upon County by multiple Leasehold Mortgagees, County may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the County, as determined by any national title company.

- 16.9 <u>Condemnation and Insurance Proceeds</u>. Any condemnation proceeds or insurance proceeds to which Tenant is entitled pursuant to this Lease shall be subject to and paid in accordance with the requirement of any Leasehold Mortgage, subject, however, to any requirement in this Lease that such proceeds must be used to repair and restore the Improvements to the Premises which were damaged or destroyed by such condemnation or casualty (including, without limitation, as required in <u>Section 7.3</u> following a casualty and in <u>Section 9.4.3</u> following a condemnation). The handling and disbursement of any such proceeds used to repair or restore the Improvements to the Premises shall be subject to the requirements of any Leasehold Mortgage, so long as such proceeds are used towards repair or reconstruction of the Improvements to the Premises to the extent required by this Lease.
- 16.10 <u>Mortgagee Clauses</u>. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder, provided that any such Leasehold Mortgagee shall hold and apply such insurance proceeds subject to the provisions of this Lease.
- 16.11 <u>No Waiver</u>. No payment made to County by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to County pursuant to County's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.
- 16.12 <u>Fees and Costs</u>. Tenant agrees to reimburse County for its reasonable attorney's fees and costs incurred in connection with County's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

ARTICLE XVII BEST MANAGEMENT PRACTICES

17.1 Tenant and all of Tenant's, subtenant, agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("**Stormwater Drainage System**"), and to ensure that pollutants do not directly impact "**Receiving Waters**" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

- 17.2 The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("NPDES") permits ("Stormwater Permits") to the County, and to the County and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.
- 17.3 To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan ("DAMP") which includes a Local Implementation Plan ("LIP") for each jurisdiction that contains Best Management Practices ("BMPs") that parties using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.
- Fact Sheets that are attached hereto as **Exhibit F**. These BMP Fact Sheets may be modified during the term of the Lease; and the Chief Real Estate Officer shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. Tenant agrees to maintain current copies of the BMP Fact Sheets on the Premises throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.
- 17.5 Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the Chief Real Estate Officer for review and approval prior to implementation.
- 17.6 Chief Real Estate Officer may enter the Premises and/or review Tenant's records at any reasonably time during normal business hours to assure that activities conducted on the Premises comply with the requirements of this Section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this Section.

ARTICLE XVIII

GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

18.1 <u>Signs.</u> Tenant agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except as approved in writing in advance by Chief Real Estate Officer, which approval may be withheld in the sole and absolute discretion of the Chief Real Estate

Officer. Tenant further agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises. Unapproved signs, banners, flags, etc., may be removed by Chief Real Estate Officer without prior notice to Tenant.

- 18.2 <u>Nondiscrimination.</u> Tenant agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.
- 18.3 <u>Taxes and Assessments</u>. Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that this Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.
- 18.4 Quitclaim of Interest upon Termination. Upon execution of this Lease, Tenant shall execute, acknowledge, and deliver to County, within thirty (30) days a good and sufficient deed, in a form as approved by the Chief Real Estate Officer, whereby all right, title, and interest of Tenant in the Premises is quitclaimed to County ("Quitclaim Deed"). The Quitclaim Deed shall be retained by the Chief Real Estate Officer for the Term and shall be recorded in the event of the termination of this Lease for any reason to remove any cloud on title created by this Lease.
- 18.5 <u>Public Records</u>. Tenant acknowledges that any written information submitted to and/or obtained by County from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise is a public record open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq.*) as now in force or hereafter amended, or any Law in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act. In the event that a public records act request is made for any financial statements and records (not including Gross Receipts Statements) and the County determines that the records must be turned over, the County will give Tenant fifteen (15) days written notice prior to turning over such records so that Tenant can take any necessary action.
- 18.6 <u>Attorney's Fees</u>. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.
- 18.7 <u>Payment Card Compliance</u>. Should Tenant conduct credit/debit card transactions in conjunction with Tenant's business with the County, on behalf of the County, or as part of the business that Tenant conducts on the Premises, Tenant covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("PCI/DSS") and Payment Application Data Security Standard ("PA/DSS") compliant and will remain compliant during the entire duration of its conduct of such activities. Tenant agrees to immediately notify County in the event Tenant should ever become non-compliant at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption. Upon demand by County,

Tenant shall provide to County written certification of Tenant's PCI/DSS and/or PA/DSS compliance.

18.8 Right to Work and Minimum Wage Laws.

- 18.8.1. In accordance with the United States Immigration Reform and Control Act of 1986, Tenant shall require its employees that directly or indirectly service the Premises, pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Tenant shall also require and verify that its contractors or any other persons servicing the Premises, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.
- 18.8.2. Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, Tenant shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Premises, in any manner whatsoever. Tenant shall require and verify that all its contractors or other persons servicing the Premises on behalf of the Tenant also pay their employees no less than the greater of the Federal or California Minimum Wage.
- 18.8.3. Tenant shall comply and verify that its contractors comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Premises or terms and conditions of this Lease.
- 18.8.4. Notwithstanding the minimum wage requirements provided for in this <u>Section 18.8</u>, Tenant, where applicable, shall comply or cause its contractors or subcontractors to comply with the prevailing wage and related requirements, as provided for in Subsection 5.1.8. below.
- 18.9 <u>Declaration of Knowledge by Tenant</u>. Tenant warrants that Tenant has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Lease improvements and business practices required in the operation and management of the uses contemplated hereunder.
- 18.10 <u>Governing Law</u>. This Lease shall be governed by and construed in accordance with the laws of the State of California.
- 18.11 <u>Venue</u>. The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

- 18.12 <u>Headings and Titles</u>. The captions of the Articles or Sections of this Lease are only to assist the parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.
- 18.13 <u>Interpretation</u>. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Premises with Tenant's expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term "County" shall include County's agents, employees, contractors, invitees, successors or others using the Premises with County's expressed or implied permission.
- 18.14 <u>Ambiguities</u>. Each party hereto has reviewed this Lease with legal counsel, and has revised (or requested revisions of) this Lease based on the advice of counsel, and therefore any rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.
- 18.15 <u>Successors and Assigns</u>. Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 18.16 <u>Time is of the Essence</u>. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.
- 18.17 <u>Severability</u>. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- 18.18 <u>Integration</u>. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein, constitutes the entire agreement between County and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by both County and Tenant. County and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.
- 18.19 <u>Notices</u>. Unless otherwise expressly stated in this Agreement, all notices under this Agreement shall be effective upon (i) personal delivery, (ii) e-mail transmission, (iii) one (1) business day after deposit with an overnight courier service (e.g., Federal Express), or (iv) three (3) business days after deposit in the United States mail, registered, certified, postage fully prepaid and addressed to the applicable Party as follows:

If to County:

County of Orange CEO/ Real Estate ATTN: Chief Real Estate Officer 333 W. Santa Ana Blvd, 3rd Floor Santa Ana, CA 92701

Email: thomas.miller@ocgov.com

Facsimile: 714/834-3018

If to Tenant:

Mind OC ATTN: Marshall Moncrief 5020 Campus Drive Newport Beach, CA 92660 Email: Marshall.Moncrief@stjoe.org

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
ATTN: Gary S. McKitterick, Esq
1900 Main Street, 5th Floor
Irvine, CA 92614
Email: gmckitterick@allenmatkins.com

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

- 18.20 <u>Amendments</u>. This Lease is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by both Parties.
- 18.21 <u>Dispositions of Abandon Property</u>. If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises fifteen (15) days after such event shall, at County's option, be deemed to have been transferred to County. County shall have the right to remove and to dispose of such property at Tenant's cost, including the cost of labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of such costs without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor. Such costs shall be deducted from any security deposit of Tenant, or at Chief Real Estate Officer's option, Chief Real Estate Officer may provide Tenant with an invoice for such costs, which invoice Tenant agrees to pay within fifteen (15) days of receipt.

- Brokers. If Tenant has engaged a broker in this transaction pursuant to a separate agreement, Tenant shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Tenant each hereby agree to indemnify and hold the County and County harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by the County in connection with any claim or demand by a person or entity for any broker's, finder's or other commission or fee from the County in connection with the Tenant's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Tenant. No broker, finder or other agent of any party hereto shall be a third-party beneficiary of this Lease.
- 18.23 **No Partnership**. This Lease shall not be construed to constitute any form of partnership or joint venture between County and Tenant. County and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County and tenant, and that County is not responsible in any way for the debts of Tenant or any other party.
- 18.24 <u>Authorization</u>. County and Tenant (each, a "signing party") each represents and warrants to the other that the person or persons signing this Lease on behalf of the signing party has full authority to do so and that this Lease binds the signing party. Concurrently with the execution of this Lease, each signing party shall deliver to the other a certified copy of a resolution of the signing party's board of directors or other governing board authorizing the execution of this Lease by the signing party.
- 18.25 **Recording**. This Lease itself shall not be recorded, but in the event that the Tenant encumbers the leasehold as set forth in <u>Article XVI</u>, a memorandum hereof may be recorded in the form of **Exhibit G** attached hereto (the "**Memorandum**"). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder only after the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.
- 18.26 **Exhibits**. This Lease contains the following exhibits, schedules and addenda, each of which is attached to this Lease and incorporated herein in its entirety by this reference:

Exhibit A: Legal Description of the Premises

Exhibit A-1: Rendering of the Premises
Exhibit B: Construction Schedule
Exhibit C: Construction Budget
Exhibit D: Construction Drawings

Exhibit E: Specifications

Exhibit F: Best Management Practices Fact Sheets

Exhibit G: Form of Memorandum of Lease

Exhibit H: Form of Non-Disturbance Agreement

- 18.27 <u>Consent/Duty to Act Reasonably</u>. Except as otherwise expressly provided herein, whenever this Lease grants County or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other Party's reasonable expectations concerning the benefits to be enjoyed under this Lease, provided that the foregoing shall only apply to the County when acting in its proprietary capacity as owner of the Premises and not as a government agency with jurisdiction over the Premises.
- 18.28 <u>Counterparts</u>. For the convenience of the parties to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document.

[Signatures On Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Lease the day and year first above written. APPROVED AS TO FORM: **TENANT** COUNTY COUNSEL MIND OC, a California nonprofit corporation By: _____ Name: Title: By: _____ Name: Title: **COUNTY** COUNTY OF ORANGE, a political subdivision of the State of California

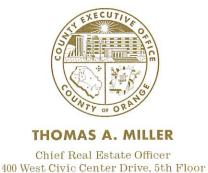
Thomas A. Miller, Chief Real Estate Officer

Orange County, California

1206004.02/OC 999903-17000/5-21-19/

Exhibit 2





Santa Ana, CA 92701

September 6, 2024

VIA EMAIL and U.S. MAIL

Victor Jordan, CFO Mind OC 18600 MacArthur Blvd., Suite 350 Irvine, CA 92612 victor.jordan@mind-oc.org

SUBJECT: Ground Lease Compliance, 265 South Anita Drive

Greetings,

As you are aware, Mind OC leases certain property located at 265 South Anita Drive in the City of Orange ("Premises") from the County of Orange ("County") pursuant to that certain Ground Lease, dated June 17, 2019 ("Ground Lease") for the purposes of constructing and operating "a Be Well OC Behavioral Health Services Campus." The Ground Lease contains certain obligations and deliverables for Mind OC, which upon review of County records have not been provided. The purpose of this letter is to request compliance with the below referenced requirements of the Ground Lease within the next ten (10) days pursuant to Section 11.1.3 (Failure to Perform):

- A. Section 4.2.1 (Required Services and Uses) lists the Permitted Uses¹ for the Premises. Please provide the County with a list of all uses currently at the Premises for verification of compliance with this Ground Lease provision. Please be aware that any services and uses not listed identified in Article IV of the Ground Lease are not permitted under Section 4.2.4.
- **B.** Section 4.2.7 (Permits and Licenses) requires that Mind OC obtain and maintain any and all permits and licenses required for the services and uses. Please provide any and all permits and licenses for the Premises and its operation.
- C. Section 5.3 ("AS-BUILT" Plans) requires that Mind OC provide the County "As-Built" plans for the improvements constructed on the Premises, as well as the final construction cost for the construction of such improvements. Please provide the required items.

¹ Any Capitalized terms not defined herein shall have the meaning as set forth in the Ground Lease.

- D. Section 10.7 (Renter Subleases) lists certain requirements related to any Subleases at the Premises. Please provide the current form of Sublease, which is required to be approved by the County, along with copies of any and all current Subleases at the Premises.
 - a. In addition, Section 10.7 contemplates that there will be multiple contracts "sufficient to sublease from [Mind OC] the entirety of the rentable services space within the Premises." As such, please provide accurate calculations of the gross square footage of the improvements on the Premises, along with a calculation of the "rentable services," with a building plan identifying these items.
 - b. Finally, provide the current sublease rate for Sublessees along with the calculations used to justify that rate, and support for the components of the Sublessee rent.²
- E. Pursuant to Section 15.3 (On-Site Manager), Mind OC is required to have an On-Site Manager for the Premises. Please provide the "name of the Manager currently so employed" by Mind OC for the management and operation of the Premises.
- **F.** Pursuant to Section 15.4 (Policies and Procedures to be Established by Tenant), please provide the "policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and uses required by the Lease," which are required to be reviewed and approved by the County.
- **G.** Pursuant to Section 15.4.5, please provide the public restroom maintenance schedule.
- **H.** Please provide updated notice information pursuant to Section 18.19 (Notices) of the Ground Lease, as that information appears outdated.

Please send the requested information within the next ten (10) days pursuant to Section 11.1.3 of the Ground Lease. We look forward to your anticipated cooperation.

Regards,

Thomas A. Miller

Chief Real Estate Officer

cc: Michelle Aguirre, Acting CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA

Phillip Franks, CEO, Mind OC

² Per the Ground Lease, the rent paid by Sublessees is to be sufficient to "cover the cost of the building and the responsibilities of [Mind OC] herein."



400 West Civic Center Drive, 5th Floor, Santa Ana, CA 92701 • County Administration North • www.ocgov.com

Exhibit 3

From: Miller, Thomas 'Mat' <Thomas.Miller@ocgov.com>

Sent: Thursday, September 12, 2024 8:27:29 AM **To:** Phillip Franks < phillip.franks@mind-oc.org>

Subject: Re: GROUND LEASE COMPLIANCE, 265 SOUTH ANITA DRIVE

Absolutely, ten days is fine. Thanks.

Thomas (Mat) Miller Chief Real Estate Officer Office: (714) 834-6019 thomas.miller@ocgov.com

From: Phillip Franks <phillip.franks@mind-oc.org> **Sent:** Wednesday, September 11, 2024 9:59:15 PM **To:** Miller, Thomas 'Mat' <Thomas.Miller@ocgov.com>

Subject: Re: GROUND LEASE COMPLIANCE, 265 SOUTH ANITA DRIVE

This message was sent securely using Zix®

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Hi Mat,

Yes, we are working to get you the first set of requested information by Friday.

We will take a look at the below requested information tomorrow. May we also request 10 days for this response?

Respectfully,

Phillip Franks

CEO

Mind OC / Be Well OC

18650 MacArthur Blvd. Ste. 350 Irvine, CA 92612

phillip.franks@mind-oc.org



Amber Bergkamp Senior Executive Assistant

amber.bergkamp@mind-oc.org
Cell: 949-386-0321

Mind OC (mind-oc.org)
BeWellOC.org

From: Miller, Thomas 'Mat' <Thomas.Miller@ocgov.com>

Sent: Wednesday, September 11, 2024 9:49 PM

To: Victor Jordan < victor.jordan@mind-oc.org>; Phillip Franks < Phillip.Franks@mind-oc.org> **Cc:** Aguirre, Michelle < Michelle.Aguirre@ocgov.com>; Kelley, Veronica < vkelley@ochca.com>

Subject: RE: GROUND LEASE COMPLIANCE, 265 SOUTH ANITA DRIVE

Phil & Victor,

Just wanted to confirm that you all are still working on the delivery of the items in the attached.

In addition, please send us copies of the following per Section 14.1 of the Lease:

- 1. The accounting of all "Operating Expenses" for the 2023 calendar years, as reference in Section 5.2.4 of the Office Lease between Mind OC and its sublessees.
- 2. The accounting of all "Tax Expenses" for the 2023 calendar years, as reference in Section 5.2.5 of the Office Lease between Mind OC and its sublessees.
- 3. Please provide Mind OC's calculation of the total Usable Square Footage (USF) and Billable Square Footage (BSF) for the Anita facility, along with the assignment of USF and BSF for Mind OC and each subtenant of the Anita facility.
- 4. Please provide floorplans of the Anita facility showing the square footages of the separate suites and common area and their occupancy.

Thanks for your assistance on this. Let me know if you would like to discuss.

Thomas (Mat) Miller

Chief Real Estate Officer, County of Orange Phone: (714) 834-6019

thomas.miller@ocgov.com

From: Miranda, Isabel < Isabel. Miranda@ocgov.com>

Sent: Thursday, September 5, 2024 4:35 PM

To: victor.jordan@mind-oc.org

Cc: Aguirre, Michelle <Michelle.Aguirre@ocgov.com>; Kelley, Veronica <vkelley@ochca.com>;

Phillip.Franks@mind-oc.org; Miller, Thomas 'Mat' <Thomas.Miller@ocgov.com>

Subject: GROUND LEASE COMPLIANCE, 265 SOUTH ANITA DRIVE

Greetings,

Attached please find correspondence regarding the above referenced subject: **Ground Lease Compliance, 265 South Anita Drive**. The original has been placed in the mail.

Best regards, Isabel



Isabel Miranda

Executive Secretary to Thomas "Mat" Miller, Chief Real Estate Officer County Executive Office | Real Estate 400 W. Civic Center Drive, 5th Floor Santa Ana, CA 92701 Office: (714) 834-2046

This message was secured by **Zix**[®].

VIA EMAIL and U.S. MAIL

County of Orange Thomas A. Miller, Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701 Thomas.Miller@ocgov.com

RE: Response No. 1

Ground Lease Compliance, 265 South Anita Drive, Orange ("Premises")

Dear Mr. Miller:

Thank you for your letter dated September 6, 2024 regarding Mind OC's lease obligations under the Ground Lease dated June 17, 2019 ("Ground Lease") for the Premises.

We acknowledge the importance of complying with all terms and conditions of the Ground Lease. As requested, we are including detailed responses to the specific requirements you outlined in your letter. Any Capitalized terms not defined herein shall have the meaning as set forth in the Ground Lease. All documents referenced below can be found in the box.com folder sent to you via email. Access to this folder will expire in ten (10) days.

A. Section 4.2.1 (Required Services and Uses) lists the Permitted Uses for the Premises. Please provide the County with a list of all uses currently at the Premises for verification of compliance with this Ground Lease provision. Please be aware that any services and uses not listed identified in Article IV of the Ground Lease are not permitted under Section 4.2.4.

Pursuant to, and in compliance with, Section 4.2, the following Permitted Uses are currently being provided at the Premises ("Uses"):

- a) Be Well OC Behavioral Health Services campus;
- b) Wellness and Social Services;
- c) Crisis Stabilization Unit;
 - i. Exodus Recovery Inc. Suites 102, 103 and 104 (Adult and Adolescent CSU)
- d) Substance Use Disorder Intake and Referral;
 - i. Exodus Recovery Inc. Suite 101 (Sobering Center)
- e) Withdrawal Management;
 - i. HealthRight360 Suite 301 (Withdrawal)
- f) Crisis Residential; and
 - i. Exodus Recovery Inc. Suite 201 (Crisis Residential)
- g) Substance Use Disorder and Co-Occurring Residential Treatment.
 - i. HealthRight360 Suite 302 (Substance Use Disorder)
 - ii. HealthRight360 Suite 202 (Co-Occurring Residential Treatment)

Mind OC confirms that pursuant to Section 4.2.4, it is not using the Premises or permitting the use of the Premises for a Restricted Use, or any other purpose than what is listed in Section 4.2.1.

B. Section 4.2.7 (Permits and Licenses) requires that Mind OC obtain and maintain any and all permits and licenses required for the services and uses. Please provide any and all permits and licenses for the Premises and its operation.

All permits and licenses required for services and uses can be found in the '4.2.7 Permits and Licenses' folder.

C. Section 5.3 ("AS-BUILT" Plans) requires that Mind OC provide the County "As-Built" plans for the improvements constructed on the Premises, as well as the final construction cost for the construction of such improvements. Please provide the required items.

The Premises "As-Built" plans and the final construction cost backup for the construction of the Premises can be found in each respective subfolder within the '5.3 As-Built Plans' folder.

The final construction cost for the construction of the Premises is \$31,156,751.10.

D. Section 10.7 (Renter Subleases) lists certain requirements related to any Subleases at the Premises. Please provide the current form of Sublease, which is required to be approved by the County, along with copies of any and all current Subleases at the Premises.

The current form of Sublease which is in the same form as the initial subleases, and copies of all current Subleases at the Premises can be found in each respective subfolder within the 'Section 10.7 Renter Subleases' folder.

Current subleases include the following sublease documents:

Tenant	Suite(s)	Document(s)
Exodus Recovery, Inc.	101	1. Office Lease dated 9/7/22
	Sobering Center	2. 1st Amendment dated 1/1/23
Exodus Recovery, Inc.	102, 103, 104	1. Office Lease dated 12/14/20
	Adult and	2. 1st Amendment dated 1/1/23
	Adolescent CSU	3. 2 nd Amendment dated 9/19/24 (unexecuted)
Exodus Recovery, Inc.	201	1. Office Lease dated 11/1/20
	Crisis Residential	2. 1 st Amendment dated 1/1/23
		3. 2 nd Amendment dated 9/19/24 (unexecuted)
HealthRight 360	202	1. Office Lease dated 1/1/23
	COD Residential	2. 1st Amendment dated 9/30/24 (unexecuted)
HealthRight 360	301	1. Office Lease dated 1/1/23

	Withdrawal	2. 1st Amendment dated 9/30/24 (unexecuted)
HealthRight 360	302 SUD	 Office Lease dated 1/1/23 1st Amendment dated 9/30/24 (unexecuted)

E. In addition, Section 10.7 contemplates that there will be multiple contracts "sufficient to sublease from [Mind OC] the entirety of the rentable services space within the Premises." As such, please provide accurate calculations of the gross square footage of the improvements on the Premises, along with a calculation of the "rentable services," with a building plan identifying these items.

The Premises (i) gross square footage calculations, (ii) "rentable services" calculations, and (iii) building plan can be found in the 'Building Calculations and Plan' subfolder within the '10.7 Renter Subleases' folder.

Additionally, per Section 10.7, "it is intended that the subleases with these service providers will in the aggregate, cover the costs of the building and the responsibilities of Tenant herein." Current subleases align with this requirement. The pro rata shares of all the sublease aggregate to 100%, as outlined in Section 1.7 (Tenant's Share) of the master form of sublease. Applicable Operating Expenses are defined in Section 5 (Operating Expenses) of the master form of sublease.

F. Finally, provide the current sublease rate for Sublessees along with the calculations used to justify that rate, and support for the components of the Sublessee rent.

Currently, building operations and future capital expenditures are funded directly by the County through the end of the Master Services Agreement term, or September 30, 2024 between Mind OC and the County.

Effective October 1, 2024, the proposed sublease rate for the Sublessees is:

\$3.01 per billable square foot per month (base rent)

\$2.74 per billable square foot per month (NNN)

\$5.75 per billable square foot per month (total monthly rent)

A 'Rental Valuation' PDF that justifies the current fair market base rate component for the Be Well OC Irvine campus ("Irvine Campus") can be found within the 'Fair Market Valuation' subfolder within the '10.7 Renter Subleases' folder. Similar to the Irvine Campus, the Premises is a class A building, in the greater Orange County area, has a specialized end user, and is fully furnished. This \$3.01 rate is the original base rent agreed upon prior to the Master Services Agreement.

Also included in the 'Fair Market Valuation' subfolder is a 'Lease Rate' spreadsheet. Anticipated actual costs are outlined in the spreadsheet which include both standard (similar to any other class A office building) and specialized (specific to the 24/7 residential nature of the Premises) NNN charges.

G. Pursuant to Section 15.3 (On-Site Manager), Mind OC is required to have an On-Site Manager for the Premises. Please provide the "name of the Manager currently so employed" by Mind QC for the management and operation of the Premises.

Anita Lewicke is Mind OC's on-site Campus Operations Manager.

H. Pursuant to Section 15.4 (Policies and Procedures to be Established by Tenant), please provide the "policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and uses required by the Lease," which are required to be reviewed and approved by the County.

The "policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and uses required by the Lease" can be found in the '15.4 Policies and Procedures to be Established by Tenant' folder. Such folder includes:

- (i) The Be Well Campus Operations Guide, which outlines Mind OC's internal processes for its oversight of the day-to-day operation and provision of permitted services; and
- (ii) The Tenant Handbook provided to tenants, which outlines essential information about the property and its operations, and communicates to tenants the rules, regulations and expectations for the tenants.

Mind OC has engaged an experienced real estate manager to oversee the Premises' day-to-day maintenance, cleanliness, and general order. This includes routine inspections, preventative maintenance, emergency repairs, vendor management, capital improvements, safety compliance, and tenant relations.

We are available to answer any questions you may have about these policies and procedures.

I. Pursuant to Section 15.4.5, please provide the public restroom maintenance schedule.

The public restroom maintenance schedule can be found in the '15.4.5 Restroom Maintenance' subfolder within the '15.4 Policies and Procedures to be Established by Tenant' folder.

In addition to the regular maintenance schedule, the janitorial vendor provides ongoing maintenance to the public restrooms, including both as-needed cleaning and routine checks throughout the day. A day porter is stationed in the Premises for 8 hours a day, 7 day per week. The day porter is an employee of Mind OC's janitorial vendor.

J. Please provide updated notice information pursuant to Section 18.19 (Notices) of the Ground Lease, as that information appears outdated.

If to Tenant:

Mind OC

Attention: Victor Jordan, CFO 18650 MacArthur Blvd, Suite 350

Irvine, CA 92612

Email: victor.jordan@mind-oc.org

With a copy to:

Allen Matkins

Attention: Gary S. McKitterick, Esq.

2010 Main Street, 8th Floor

Irvine, CA 92614

Email: gmckitterick@allenmatikins.com

Thank you for reviewing the materials provided. Our team is available to answer any questions you might have about the information presented. Please do not hesitate to contact us with your inquiries.

Mind OC is committed to fulfilling our responsibilities under the Ground Lease and maintaining a positive relationship with the County of Orange.

Best regards,

MIND OC

Phillip Franks

CEO

cc: Victor Jordan, CFO, Mind OC

Philly Franks

Michelle Aguirre, Acting CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA

VIA EMAIL and U.S. MAIL

County of Orange Thomas A. Miller, Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701 Thomas.Miller@ocgov.com

RE: Response No. 2

Ground Lease Compliance, 265 South Anita Drive, Orange ("Premises")

Dear Mr. Miller:

Thank you for your follow-up email dated September 11, 2024 requesting additional documentation to support Section 14.1 of Mind OC's current form of master sublease ("Sublease") for the Premises.

As requested, we are including detailed responses to the specific requests in your email. Any capitalized terms not defined in this letter shall have the meaning as set forth in the Sublease. All documents referenced below can be found in the box.com folder sent to you via email. Access to this folder will expire in ten (10) days.

1. The accounting of all "Operating Expenses" for the 2023 calendar years, as reference in Section 5.2.4 of the Office Lease between Mind OC and its sublessees.

As referenced in Section 5.2.4. of the Sublease, the accounting of all Operating Expenses for the 2023 calendar year can be found in the '1 & 2. 2023 Operating and Tax Expenses' folder, document titled 'Be Well OC Orange – Operating and Tax Expenses 2023', which includes footnotes with additional information defining actual and grossed up expenses.

2. The accounting of all "Tax Expenses" for the 2023 calendar years, as reference in Section 5.2.5 of the Office Lease between Mind OC and its sublessees.

As referenced in Section 5.2.5. of the Sublease, the accounting of all Tax Expenses for the 2023 calendar year can be found in the '1 & 2. 2023 Operating and Tax Expenses' folder, document titled 'Be Well OC Orange – Operating and Tax Expenses 2023', which includes a footnote with additional information regarding a welfare exemption received.

3. Please provide Mind OC's calculation of the total Usable Square Footage (USF) and Billable Square Footage (BSF) for the Anita facility, along with the assignment of USF and BSF for Mind OC and each subtenant of the Anita facility.

Mind OC's calculation of the (i) total Usable Square Footage (USF) (ii) total Billable Square Footage (BSF), and (iii) assignment of the USF and BSF for Mind OC and each subtenant of the Premises can be found in the '2. Building Calculations and Plan' folder.

Mind OC occupies a portion of the Wellness/Social Services Area to provide support of the Permitted Services and building operations pursuant to Sections 15.3 and 15.4 of the Ground Lease, which each tenant is allocated its pro rata share of such area.

Additionally, Exhibit A-2 'Tenant's Billable Square Footage Calculation' has been extracted from each of the six (6) subleases, and can be found in the 'Tenant Subleases Exhibit A-2' subfolder. Such square USF and BSF calculations align with the '265 S Anita – Billable Allocation by Suite' calculations.

4. Please provide floorplans of the Anita facility showing the square footages of the separate suites and common area and their occupancy.

The floor plans of the Anita facility showing the square footages of the separate suites and common area and their occupancy within the Premises can be found in the '4. Annotated Floorplans' folder.

Please do not hesitate to contact us if you have any additional questions.

Best regards,

MIND OC

Phillip Franks

Philly Franks

CEO

cc: Victor Jordan, CFO, Mind OC

Michelle Aguirre, Acting CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA



OFFICE OF THE COUNTY COUNSEL COUNTY OF ORANGE

400 W. CIVIC CENTER DR., STE 202 SANTA ANA, CA 92701 MAILING ADDRESS: P.O. BOX 1379 SANTA ANA, CA 92702-1379 (714) 834-3300 FAX: (714) 834-2359 Michael A. Haubert Senrio Deputy County Counsel (714) 474-7180

E-Mail: Michael.haubert@coco.ocgov.com

September 26, 2024

Mind OC

Attn: Victor Jordan, CFO

18650 MacArthur Blvd, Suite 350

Irvine, CA 92612

Email: victor.jordan@mind-oc.org

Allen Matkins

Attn: Gary S. McKitterick, Esq. 2010 Main Street, 8th Floor

Irvine, CA 92614

Email: gmckitterick@allenmatkins.com

Re: NOTICE OF DEFAULT

Dear Messrs. Jordan and McKitterick:

Pursuant to that certain ground lease ("Ground Lease") dated June 17, 2019 between Mind OC ("Mind OC") and the County of Orange ("County") for the real property located at 265 South Anita Drive, Orange, CA ("Premises"), please be advised that as of the date of this notice, Mind OC is in continuing <u>DEFAULT</u> under the terms and conditions of the Ground Lease due to the uncured breaches set forth herein.

As you are fully aware, the intent of the Ground Lease is to bring together public and private resources to design and construct a wellness hub to provide a countywide behavioral health service system. (See Ground Lease Recitals D, E, and F.) Moreover, the Parties intended for the County's behavioral health service providers to occupy and use the entirety of the Premises. (See Recital F and Section 4.2 of the Ground Lease.) Unfortunately, Mind OC has instead (1) enacted unauthorized Subleases, (2) sought to recover costs beyond "the cost of the building and the responsibilities of" Mind OC set forth in the Ground Lease, (3) permitted unauthorized uses of the Premises, and (4) failed to maintain its legal obligations to retain its status as a non-profit charitable organization in good standing under the laws of California. These points are more fully elaborated upon below.

Mind OC Defaults for Unauthorized Subleases, Excessive Cost Recovery, and Unpermitted Uses

On September 6, 2024, the County sent Mind OC a letter requesting compliance with multiple provisions in the Ground Lease (see Attachment 1). The letter notified Mind OC of its obligation to cure all noted deficiencies within the 10-day period pursuant to Section 11.1.3 of

the Ground Lease. Without reiterating the entirety of the County's letter, the following is a synopsis of the information requested by the County.

Mind OC has failed to provide the requested information within the mandatory 10-day period for the following items:

First, although Mind OC has recently produced copies of Subleases to the County, Mind OC only did so because the County demanded that Mind OC comply with the Ground Lease. Additionally, these Subleases have been in effect for over a year, yet they have never undergone review and approval by the County as mandated by the Ground Lease. Specifically, Section 10.7.1 requires this review process take place prior to the effectiveness of the Subleases. Accordingly, Mind OC has breached and is currently in default for violating Section 10.7.1.

Second, the rent paid by Sublessees to Mind OC is to be sufficient to "cover the cost of the building and the responsibilities of [Mind OC] herein." See Section 10.7. The County notes that Mind OC is drastically limited in the costs it may recover under the Lease. For example, Mind OC has no acquisition or construction costs to recover because these costs were paid for by the County and other unaffiliated entities. Therefore, Mind OC's recoverable costs are limited only to cover the operational costs such as management, maintenance, repair, taxes, and utilities. (See, e.g. Sections 3.3 (Triple Net Rent), 3.5 (Additional Rent), 3.5.5 (Operating Costs), Article XV (OPERATIONAL OBLIGATIONS OF TENANT), and 18.3 Taxes and Assessments).

To help the County assess what costs may be recovered, Mind OC is obligated to maintain complete books and records "of all financial transactions in the operation of all business activities" related to the Ground Lease. See Section 14.1. The County has requested that Mind OC disclose all "Operating Expenses" for the 2023 calendar year, including rental income from the Subleases and tax expenses, to confirm Mind OC's compliance with the aforementioned cost recovery standards. Despite the County's best efforts to request this information, Mind OC has not complied or produced the information within 10 days of the request. Yet, it is apparent that the rates being charged by Mind OC in the Subleases exceed the agreed upon cost recovery expressly stated in the Ground Lease. Thus, Mind OC is in breach and default for exceeding the Sublease rental rates as set forth in Section 10.7.

Third, Mind OC has allowed the Premises to be used for unauthorized activities. Only those uses specifically enumerated in the Ground Lease ("Permitted Uses") or any such "Ancillary" services authorized by the County are allowed at the Premises. (See Section 4.2.4, "The services and uses listed in this Article IV, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises except as approved in writing by the Chief Real

¹ All references to "Section" or "Article" shall refer to the Ground Lease, unless otherwise indicated.

Estate Officer as set forth herein, which approval may be granted or withheld in the sole discretion of the Chief Real Estate Officer.") Mind OC is currently using no less than five (5) offices at the Premises for undisclosed purposes, which is not authorized by the Ground Lease or by the County. Hence, Mind OC's use of these offices for undisclosed purposes violates Section 4.2.4.

Mind OC's Default For Non-Compliance With Non-Profit Laws

Finally, Mind OC has persisted in its delinquency with the California Attorney General's Registry of Charity's and Fundraisers for failure to submit annual report(s) and/or renewal fees. (See Attachment 2.) Although Mind OC received a second notice of delinquency on July 26, 2024, from the Attorney General's Office for Mind OC's failure to submit annual reports and or renewal fees, Mind OC has yet to cure its delinquency status. The County relied upon Mind OC's non-profit status in entering the Ground Lease. The County may form partnerships with private entities only under narrow circumstances. The Ground Lease relied upon Mind OC's status as a non-profit entity under Government Code section 26227 to use County property for the aforementioned public health care needs. Mind OC has jeopardized the Ground Lease by allowing its non-profit status to fall into delinquency.

A California charitable non-profit like Mind OC is required to register with the Attorney General and maintain its good standing with the Attorney General to operate lawfully. See Cal. Code Regs., tit. 11, § 999.9.4 ("A person or entity subject to the registration requirements of Government Code section 12580 et seq., must be registered and in good standing with the Registry of Charitable Trusts to operate or solicit for charitable purposes. A registration that is delinquent, suspended or revoked is not in good standing and is prohibited from engaging in conduct for which registration is required including, but not limited to solicitation for charitable purposes.") As of the date of this letter, Mind OC remains a "Delinquent" entity. Thus, Mind OC remains in default of its requirement to obey all applicable Laws. (See, e.g. Section 4.4, "Tenant shall not use or permit the Premises or the Improvements or any portion thereof to be used in any manner or for any purpose that violates any applicable Laws in any material respect.") Mind OC remains in default and its delinquent status may undermine the County's lawful ability to continue the Ground Lease.

Conclusion

Any one of the aforementioned uncured defaults is sufficient grounds for termination of the Ground Lease. See Sections 11.1.3 (Failure to Perform) and 11.2.1 (Termination of Lease); Civil Code § 1952.1 ("Except as otherwise provided in Section 1951.4, if a lessee of real property breaches the lease and abandons the property before the end of the term *or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates*. ..."). Nevertheless, the County may also allow the Ground Lease to continue, demand

compliance from Mind OC, and reserve its legal rights including any right to terminate the Ground Lease.

Accordingly, the County reserves its right to terminate the Ground Lease and demands Mind OC cure the above referenced defaults within 10 days pursuant to Section 11.1.3 Further, pursuant to Section 11.2, the County reserves all rights to seek any additional and cumulative remedies available at law or equity, which may include disgorgement and recapture of any of funds in excess of Mind OC's allowable cost recovery under the Ground Lease.

Very truly yours,

LEON J. PAGE COUNTY COUNSEL

By Michael A. Hawkett
MICHAEL HAUBERT

cc: Michelle Aguirre, Interim CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA

Thomas (Mat) Miller, Chief Real Estate Officer, CEO Real Estate

Enclosures

ATTACHMENT 1





Santa Ana, CA 92701

September 6, 2024

VIA EMAIL and U.S. MAIL

Victor Jordan, CFO Mind OC 18600 MacArthur Blvd., Suite 350 Irvine, CA 92612 victor.jordan@mind-oc.org

SUBJECT: Ground Lease Compliance, 265 South Anita Drive

Greetings,

As you are aware, Mind OC leases certain property located at 265 South Anita Drive in the City of Orange ("Premises") from the County of Orange ("County") pursuant to that certain Ground Lease, dated June 17, 2019 ("Ground Lease") for the purposes of constructing and operating "a Be Well OC Behavioral Health Services Campus." The Ground Lease contains certain obligations and deliverables for Mind OC, which upon review of County records have not been provided. The purpose of this letter is to request compliance with the below referenced requirements of the Ground Lease within the next ten (10) days pursuant to Section 11.1.3 (Failure to Perform):

- A. Section 4.2.1 (Required Services and Uses) lists the Permitted Uses¹ for the Premises. Please provide the County with a list of all uses currently at the Premises for verification of compliance with this Ground Lease provision. Please be aware that any services and uses not listed identified in Article IV of the Ground Lease are not permitted under Section 4.2.4.
- **B.** Section 4.2.7 (Permits and Licenses) requires that Mind OC obtain and maintain any and all permits and licenses required for the services and uses. Please provide any and all permits and licenses for the Premises and its operation.
- C. Section 5.3 ("AS-BUILT" Plans) requires that Mind OC provide the County "As-Built" plans for the improvements constructed on the Premises, as well as the final construction cost for the construction of such improvements. Please provide the required items.

¹ Any Capitalized terms not defined herein shall have the meaning as set forth in the Ground Lease.

- D. Section 10.7 (Renter Subleases) lists certain requirements related to any Subleases at the Premises. Please provide the current form of Sublease, which is required to be approved by the County, along with copies of any and all current Subleases at the Premises.
 - a. In addition, Section 10.7 contemplates that there will be multiple contracts "sufficient to sublease from [Mind OC] the entirety of the rentable services space within the Premises." As such, please provide accurate calculations of the gross square footage of the improvements on the Premises, along with a calculation of the "rentable services," with a building plan identifying these items.
 - b. Finally, provide the current sublease rate for Sublessees along with the calculations used to justify that rate, and support for the components of the Sublessee rent.²
- E. Pursuant to Section 15.3 (On-Site Manager), Mind OC is required to have an On-Site Manager for the Premises. Please provide the "name of the Manager currently so employed" by Mind OC for the management and operation of the Premises.
- F. Pursuant to Section 15.4 (Policies and Procedures to be Established by Tenant), please provide the "policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and uses required by the Lease," which are required to be reviewed and approved by the County.
- **G.** Pursuant to Section 15.4.5, please provide the public restroom maintenance schedule.
- H. Please provide updated notice information pursuant to Section 18.19 (Notices) of the Ground Lease, as that information appears outdated.

Please send the requested information within the next ten (10) days pursuant to Section 11.1.3 of the Ground Lease. We look forward to your anticipated cooperation.

Regards,

Thomas A. Miller

Chief Real Estate Officer

Michelle Aguirre, Acting CEO & CFO, County of Orange CC:

Dr. Veronica Kelley, Director, HCA

Phillip Franks, CEO, Mind OC

² Per the Ground Lease, the rent paid by Sublessees is to be sufficient to "cover the cost of the building and the responsibilities of [Mind OC] herein."



ATTACHMENT 2



1300 I Street
P. O. Box 903447
Sacramento, CA 94203-4470
Fax: (916) 444-3651
Delinquency-Notices@doj.ca.gov

July 26, 2024

MIND OC 18650 MACARTHUR BLVD., STE. 220 NEWPORT BEACH CA 92660

State Charity Registration Number: CT0265460

RE: DELINQUENCY NOTICE AND WARNING OF ASSESSMENT OF PENALTIES AND LATE FEES, AND SUSPENSION OR REVOCATION OF REGISTERED STATUS

The above captioned entity is listed as delinquent with the Registry of Charities and Fundraisers for failing to submit required annual report(s) and/or renewal fees. To research why your organization is delinquent and what filings are missing, please review your filings using the Registry Search Tool: **rct.doj.ca.gov**. *If you have recently cured, your status will show as* Current *and you may disregard this notice*.

AFTER REVIEWING THE STATUS OF YOUR FILINGS USING rct.doj.ca.gov, PLEASE FILE:

Annual Registration Renewal Fee Reports (Form RRF-1), together with required renewal fee and Form CT-TR-1 or IRS Form 990(-EZ/PF) for the accounting period(s) that are indicated as *Rejected*, *Incomplete* or *Not Submitted* according to the Registry Search Tool. Please use the Annual Registration Renewal Fee Schedule on Form RRF-1 to determine the total amount of renewal fee(s) due.

IRS Form 990(-EZ/PF) filers: Schedule B is not requested or required by the Registry; Please exclude all pages of Schedule B, including the first page, even if redacted, blank or marked for *Public View*.

NOTIFICATION TO THE FRANCHISE TAX BOARD

The California Franchise Tax Board will be notified to disallow the tax exemption of the above-named entity and may revoke the organization's tax exempt status at which point the organization will be treated as a taxable corporation (Rev. & Tax. Code, § 23703) and may be subject to the minimum tax penalty.

An organization that is listed as delinquent is not in good standing and is prohibited from engaging in conduct for which registration is required, including soliciting or disbursing charitable funds. (Cal. Code Regs., tit. 11, § 999.9.4.)

The organization may also be subject to penalties and its registration may be suspended or revoked by the Registry. Once you submit the delinquent record(s) you will be notified of the amount of any late fees that are owed.

To avoid the above-described actions, please send all delinquent reports and fees, together with a copy of this letter, to the address set forth above within sixty (60) days of the date of this letter. Any deadlines specified in letters sent previously supersede this one.

If you have any questions, you may email us: **Delinquency-Notices@doj.ca.gov**. Online resources including a delinquency webinar, forms, instructions, guides, and answers to frequently asked questions are available on our website: **oag.ca.gov/charities/delinquency**

Sincerely,

Registry of Charities and Fundraisers

For

ROB BONTA Attorney General



Jeffrey M. Singletary
O 714.427.7473 | F 714.427.7799
jsingletary@swlaw.com

October 4, 2024

By Email and Overnight Delivery - michael.haubert@coco.ocgov.com
Michael Haubert
Office of the County Counsel
County of Orange
400 W. Civic Center Drive, Suite 202
Santa Ana, CA 92701

Re: Mind OC / Response to County of Orange Notice of Default

Dear Mr. Haubert,

Mind OC has retained this law firm, Snell & Wilmer, to fully protect its rights and interests afforded by the Ground Lease in Orange. I write in response to your letter dated September 26, 2024. Before responding specifically to your letter and the County's allegations of default, it is important to note that Mind OC is committed to continuing its mission of enhancing behavioral health services for all Orange County residents. This has been and will be best accomplished through the framework of a public private partnership. The County and its private partners made significant contributions to the infrastructure on the Premises¹ to serve as a wellness hub for much-needed behavioral health services, and together with residents, patients, providers, and other stakeholders have an interest in seeing the facilities effectively operated. Termination of the Ground Lease is not a result that best serves this community.

Mind OC desires an amicable resolution to the parties over Mind OC's good faith compliance with the Ground Lease. The County delivered its initial demand for information by letter on September 6, 2024, followed by an email demand for additional information on September 11, 2024. Mind OC responded in writing to each demand and timely delivered all information sought. The County now issues a formal "Notice of Default", by its letter dated September 26, and alleges that Mind OC is in continuing default under the terms and conditions of the Ground Lease. The County's stated grounds for the alleged default are that "Mind OC has (1) enacted unauthorized subleases, (2) sought to recover costs beyond 'the cost of the building and the responsibilities of' Mind OC set forth in the Ground Lease, (3) permitted unauthorized uses of the Premises, and (4) failed to maintain its legal obligations to retain its status as a non-profit charitable organization in good standing under the laws of California." Mind OC disagrees with each of the County's four grounds for default.

The default grounds stated do not support the County's apparent quest to terminate the Ground Lease. Mind OC will address the alleged Events of Default in turn; however, we sincerely hope that the County sees a path to resolution without threat of termination and "allows the Ground Lease to continue" with a clearer understanding for all parties on compliance moving forward.

Any capitalized terms not defined herein shall have the meaning as set forth in the Ground Lease.



Michael Haubert County of Orange October 4, 2024 Page 2

Sublease Approval by the County

The County's Notice of Default asserts that Mind OC breached the Ground Lease and is currently in default for violation of section 10.7.1. As you know, section 10.7.1 requires County approval of subleases on the Premises and the County cannot unreasonably withhold such approval. The relationship between Mind OC and the County is, and always has been, a public private partnership to serve the people of Orange County. Referring to the Ground Lease, as stated in your letter, "the intent of the Ground Lease is to bring together public and private resources to design and construct a wellness hub to provide a countywide behavioral health service system." Mind OC has always operated under this "partnership" mindset in fulfilling its core purpose as well as its contractual duties.

As to the subleases now in effect, including all subleases and amendments, the County's Chief Real Estate Officer, Thomas "Mat" Miller, personally met with the CEO of Mind OC, Phillip Franks, on September 9, 2024, to review the subleases. Attached as **Exhibit 1** is an invitation for the meeting. During the meeting, Miller reviewed and approved the subleases and amendments. On September 11, 2024, Franks messaged Miller the following, "Morning Mat, I hope you are well. Are we ok to send the leases to Exodus and HR360 for review and signature?" Miller responded, "Yes please do. Thanks." Attached as **Exhibit 2** are the text messages exchanged between Franks and Miller.

The subleases and amendments, of course, were no surprise to the County or its Chief Real Estate Officer. In fact, prior to Mr. Miller's approval of the subleases the County had executed service contracts with providers requiring the service providers to maintain services at the Premises. Attached as **Exhibit 3** is a contract for services between Exodus Recovery, Inc. and the County (the "Exodus Service Contract"), effective September 19, 2024, but executed by the County and Exodus on September 5, 2024. The Exodus Service Contract provides that Exodus "shall maintain the capability to provide Crisis Stabilization Services to Clients aged thirteen (13) and above at the following facility, which meets the minimum requirements for Medi-Cal eligibility and Designation: 265 South Anita Drive, Orange, CA 92868[.]" The address on Anita Drive is the Premises, as referenced herein.

In sum, the County contracted with providers requiring that services be offered at the Premises, subsequently reviewed and approved subleases between Mind OC and those same providers, and now contends that the alleged failure to seek County approval for the subleases constitutes an Event of Default. Not so. There has been no Event of Default under these circumstances. Mind OC had a cooperative partnership with the County for development, and contracting with providers for services and rent, documented by numerous emails between Mind OC and the County exchanged between 2019 and present. Attached as **Exhibit 4** is an example of this cooperation, an email dated March 6, 2020, outlining topics addressed in a meeting with the County including "Program Design" and "Rent Setting." Mind OC will continue to work cooperatively with the County to resolve this matter and trusts that the additional information provided has put to rest any uncertainty as to whether the County approved the subleases.



Michael Haubert County of Orange October 4, 2024 Page 3

Rent Paid Pursuant to the Subleases and Request for Books and Records

The County cites the Ground Lease section 10.7 and claims that "Mind OC is drastically limited in the costs it may recover under the Lease." This claim is misinterpretation of the Ground Lease. In relevant party, section 10.7 states:

The Parties anticipate that, prior to the completion of construction, the County will be party to multiple contracts for services through the Lease term in order to meet the requirements articulated in Section 4.2 herein, and sufficient to sublease from the Tenant the entirety of the rentable services space within the Premises. It is intended that the subleases with these service providers will, in the aggregate, cover the costs of the building and the responsibilities of Tenant herein. County will take all reasonable steps to accomplish forming such contracts for services.

Ground Lease, § 10.7 (emphasis added).

This provision in no way limits rents to be collected by Mind OC. To the contrary, the provision dictates that rent from subleases will at least, "in aggregate", cover the costs of the building and responsibilities of Mind OC as the tenant. This is a floor and not a ceiling on rents to be collected from subtenants. The rents should at least cover the costs of the building and the County will take reasonable step in forming contracts with providers to accomplish this objective. There is no Event of Default based on the market rents charged to the subtenants.

Further, in an email dated September 11, 2024, the County requested certain books and records of Mind OC, including accounting for operating expenses, tax expenses, calculations of usable square footage, and floorplans. Mind OC responded with the requested information. Attached as **Exhibit 5** is Mind OC's letter response dated September 19, 2024, responding to the County's request for books and records. Attached as **Exhibit 6** is the email accompanying Mind's OC's letter response and referencing a link to the records requested. The County claims that despite its "best efforts to request this information, Mind OC has not complied or produced the information with 10 days of the request." This claim is not accurate. If, for whatever reason, the County is unable to access the information provided, please advise my office and we will coordinate a second delivery.

Permitted Uses of the Premises

Mind OC operates within the permitted and required uses detailed in the Ground Lease. The County contends that "Mind OC is currently using no less than five (5) offices at the Premises for undisclosed purposes, which is not authorized by the Ground lease or by the County." However, at the request of the County, Mind OC disclosed its use of the Premises in a letter dated September 13, 2024, which is attached here as **Exhibit 7** for reference. The County requested a list of all uses currently at the Premises for verification of compliance with the Ground Lease. The list provided by Mind OC included both "Be Well OC Behavioral Health Service campus" and "Wellness and



Michael Haubert County of Orange October 4, 2024 Page 4

Social Service." These services or "uses" of the Premises are each permitted by Ground Lease at section 4.2.1(a)-(b). Mind OC's use of the Premises must also include, pursuant to sections 15.3 and 15.4, an on-site manager and "active, qualified, competent, and experienced personnel to supervise Tenant's operation and to represent and act for Tenant." Mind OC's use of the office space at issue is to support and maintain the Be Well OC Behavioral Health Service campus. As of October 4, 2024, the offices referenced are the only portions of the Premises occupied by Mind OC.

Registration as a Charitable Non-Profit

Mind OC's charity registration status with the Office of the Attorney General is "Current" as of the date of this letter. The County claims that a delinquency in registration status is a violation of law that jeopardizes the Ground Lease, citing section 4.4 which states, "Tenant shall not use or permit the Premises... to be used in any manner or for any purpose that violates an applicable Laws in any material respect." However, before the County's letter dated September 26, Mind OC submitted the necessary papers to the State Department of Justice, Office of the Attorney General, to cure its delinquent renewal status, as shown by the attached **Exhibit 8** (email indicating the mailing of registration papers and payment on September 11, 2024, and again on September 20, 2024). Even assuming that Mind OC's status constitutes a "material" violation of law—merely being delinquent rather than having status revoked or suspended—then clearly its status was capable of being cured and was immediately cured by the submission of the registration papers. Late registration and temporary delinquency in registration status as a charitable organization is not an Event of Default.

We are hopeful that this information puts to rest any claims of Events of Default and provides a basis for a cooperative, fulsome discussion about how the parties can continue to operate without interruptions and disputes under the Ground Lease. To that end, I invite you to set up a time for the two sides to meet to discuss these issues as soon as reasonably practical. I look forward to your response. Thank you.

Very truly yours,

Snell & Wilmer

Jeffrey M. Singletary

JMS/rm Enclosures 4878-3101-8731





Calendar philip.franks@mind-oc.org



Be Well Orange Meeting

Monday, September 9, 2024 11:30 AM → 12:30 PM (1 hour)

Yes



- 400 West Civic Center Drive, 5th Floor, Santa Ana, CA
- 0
- CAN Floor 5 Room 522 Capacity =
- (0)

Miller, Thom...' (Organizer)

Thomas.Miller@ocgov.com

Phillip Franks

phillip.franks@mind-oc.org

CAN Floor 5 Room 522 C... > CANFloor5Room522@ocgov.co...











your office on Monday?

Fri, Sep 6 at 2:42 PM

That works for me - will send a meeting invite.

Wed, Sep 11 at 11:13 AM

Morning Mat, I hope you are well. Are we ok to send the leases to Exodus and HR 360 for review and signature?

Wed, Sep 11 at 2:00 PM



Yes please do. Thanks.

Wed, Sep 18 at 9:36 AM

Morning Mat, we are now being told we are not meeting requirements to have the leases executed by the providers. Would you be able to chat very briefly to discuss?



Text Message



CONTRACT FOR PROVISION OF CRISIS STABILIZATION SERVICES AND CRISIS RESIDENTIAL SERVICES BETWEEN

COUNTY OF ORANGE

AND

EXODUS RECOVERY, INC. SEPTEMBER 19, 2024 THROUGH JUNE 30, 2027

THIS CONTRACT entered into this 19th day of September, 2024 (effective date), is by and between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and EXODUS RECOVERY, INC., a California C Corporation (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually as "Party" or collectively as "Parties." This Contract shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

WITNESSETH:

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Crisis Stabilization Services and Crisis Residential Services described herein to the residents of Orange County; and

WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained herein, COUNTY and CONTRACTOR do hereby agree as follows:

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REFERENCED CONTRACT PROVISIONS

Term: September 19, 2024 through June 30, 2027

Period One means the period from September 19, 2024 through June 30, 2025

Period Two means the period from July 1, 2025 through June 30, 2026

Period Three means the period from July 1, 2026 through June 30, 2027

Amount Not to Exceed:

Period One Amount Not to Exceed: \$11,868,123
Period Two Amount Not to Exceed: \$15,150,923
Period Three Amount Not to Exceed: \$15,150,923
TOTAL AMOUNT NOT TO EXCEED: \$42,169,969

Basis for Reimbursement: Actual Cost

Payment Method: Monthly in Arrears

CONTRACTOR UEI Number: NQHYN567JN85

CONTRACTOR TAX ID Number: 95-4156974

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange CONTRACTOR: Exodus Recovery, Inc.

Health Care Agency CEO (Currently: Luana Murphy)
Procurement & Contract Services 9808 Venice Boulevard, Suite 700

405 West 5th Street, Suite 600 Culver City, CA 90232

Santa Ana, CA 92701–4637 LMurphy@exodusrecovery.com

CFDA#	FAIN#	Program/ Service Title	Federal Funding Agency	Federal Award Date	Amount	R&D Award (Y/N)
Pending	Pending	Pending	Pending	Pending	Pending	Pending

//

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I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Contract:

A.	AB 109	Assembly Bill 109, 2011 Public Safety Realignment

B. AIDS Acquired Immune Deficiency Syndrome

C. ARRA American Recovery and Reinvestment Act of 2009

D. ASAM PPC American Society of Addiction Medicine Patient Placement Criteria

E. ASI Addiction Severity Index

F. ASRS Alcohol and Drug Programs Reporting System

G. BHS Behavioral Health Services

H. CalOMS California Outcomes Measurement System

I. CalWORKs California Work Opportunity and Responsibility for Kids

J. CAP Corrective Action PlanK. CCC California Civil Code

L. CCR California Code of Regulations

M. CESI Client Evaluation of Self at Intake

N. CEST Client Evaluation of Self and TreatmentO. CFDA Catalog of Federal Domestic Assistance

P. CFR Code of Federal Regulations

Q. CHPP COUNTY HIPAA Policies and Procedures

R. CHS Correctional Health Services

S. COI Certificate of Insurance

T. CPA Certified Public Accountant

U. CSW Clinical Social Worker

V. DHCS California Department of Health Care Services

W. D/MC Drug/Medi-Cal

X. DPFS Drug Program Fiscal Systems

Y. DRS Designated Record Set

Z. EEOC Equal Employment Opportunity Commission

AA. EHR Electronic Health Records
AB. EOC Equal Opportunity Clause

AC. ePHI Electronic Protected Health Information

AD. EPSDT Early and Periodic Screening, Diagnosis, and Treatment

AE. FFS Fee For Service

AF. FSP Full Service Partnership
AG. FTE Full Time Equivalent

AH. GAAP Generally Accepted Accounting Principles

AI. HCA County of Orange Health Care Agency AJ. HHS Federal Health and Human Services Agency AK. HIPAA Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 AL. HITECH Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 AM. HIV Human Immunodeficiency Virus AN. HSC California Health and Safety Code AO. IRIS **Integrated Records and Information System** AP. ITC **Indigent Trauma Care** AQ. LCSW Licensed Clinical Social Worker AR. MAT Medication Assisted Treatment AS. MFT Marriage and Family Therapist AT. MH Mental Health AU. MHP Mental Health Plan Mental Health Specialist AV. MHS AW. MHSA Mental Health Services Act AX. MSN Medical Safety Net AY. NIH National Institutes of Health National Provider Identifier AZ. NPI BA. NPPES National Plan and Provider Enumeration System BB. OCR Federal Office for Civil Rights BC. OIG Federal Office of Inspector General BD. OMB Federal Office of Management and Budget BE. OPM Federal Office of Personnel Management BF. P&P Policy and Procedure BG. PA DSS Payment Application Data Security Standard BH. PATH Projects for Assistance in Transition from Homelessness BI. PC California Penal Code BJ. PCI DSS Payment Card Industry Data Security Standards BK. PCS Post-Release Community Supervision BL. PHI **Protected Health Information** BM. PII Personally Identifiable Information BN. PRA California Public Records Act BO. PSC **Professional Services Contract System** BP. SAPTBG Substance Abuse Prevention and Treatment Block Grant BQ. SIR **Self-Insured Retention**

BR. SMA Statewide Maximum Allowable (rate)

BS. SOW Scope of Work

BT. SUD Substance Use Disorder

BU. UMDAP Uniform Method of Determining Ability to Pay

BV. UOS Units of Service
BW. USC United States Code

BX. WIC Women, Infants and Children

II. ALTERATION OF TERMS

A. This Contract, together with Exhibits A, B and C attached hereto and incorporated herein, fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Contract.

B. Unless otherwise expressly stated in this Contract, no addition to, or alteration of the terms of this Contract or any Exhibits, whether written or verbal, made by the parties, their officers, employees or agents shall be valid unless made in the form of a written amendment to this Contract, which has been formally approved and executed by both parties.

III. ASSIGNMENT OF DEBTS

Unless this Contract is followed without interruption by another contract between the Parties hereto for the same services and substantially the same scope, at the termination of this Contract, CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of persons receiving services pursuant to this Contract. CONTRACTOR shall immediately notify by mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of said persons, shall be immediately given to COUNTY.

IV. BENEFICIARIES' RIGHTS

- A. CONTRACTOR shall post the current California Department of Mental Health Patients' Rights poster as well as the Orange County HCA Mental Health Plan Grievance and Appeals poster in locations readily available to Clients and staff and have Grievance and Appeal forms in the threshold languages and envelopes readily accessible to Clients to take without having to request it on the unit.
- B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have internal grievance processes approved by ADMINISTRATOR, to which the Client shall have access.
- 1. CONTRACTOR's grievance processes shall incorporate COUNTY's grievance, patients' rights, and/or utilization management guidelines and procedures. The Client has the right to utilize either or both grievance process simultaneously in order to resolve their dissatisfaction.

- 2. Title IX Rights Advocacy. This process may be initiated by a Client who registers a statutory rights violation or a denial or abuse complaint with the County Patients' Rights Office. The Patients' Rights office shall investigate the complaint, and Title IX grievance procedures shall apply, which involve ADMINISTRATOR'S Director of Behavioral Health Care and the State Patients' Rights Office.
- C. The parties agree that Clients have recourse to initiate an expression of dissatisfaction to CONTRACTOR, appeal to the County Patients' Rights Office, file a grievance, and file a Title IX complaint. The Patients' Advocate shall advise and assist the Client, investigate the cause of the grievance, and attempt to resolve the matter.
- D. No provision of this Contract shall be construed as to replacing or conflicting with the duties of County Patients' Rights Office pursuant to Welfare and Institutions Code Section 5500.

V. COMPLIANCE

- A. COMPLIANCE PROGRAM ADMINISTRATOR has established a Compliance Program for the purpose of ensuring adherence to all rules and regulations related to federal and state health care programs.
- 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and procedures relating to ADMINISTRATOR's Compliance Program, Code of Conduct and access to General Compliance and Annual Provider Trainings.
- 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own compliance program, code of conduct and any compliance related policies and procedures. CONTRACTOR's compliance program, code of conduct and any related policies and procedures shall be verified by ADMINISTRATOR's Compliance Department to ensure they include all required elements by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to this Contract. These elements include:
 - a. Designation of a Compliance Officer and/or compliance staff.
 - b. Written standards, policies and/or procedures.
 - c. Compliance related training and/or education program and proof of completion.
 - d. Communication methods for reporting concerns to the Compliance Officer.
 - e. Methodology for conducting internal monitoring and auditing.
 - f. Methodology for detecting and correcting offenses.
 - g. Methodology/Procedure for enforcing disciplinary standards.
- 3. If CONTRACTOR does not provide proof of its own compliance program to ADMINISTRATOR, CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program and Code of Conduct, CONTRACTOR shall submit to ADMINISTRATOR within thirty (30) calendar days of execution of this Contract a signed acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program and Code of Conduct. CONTRACTOR shall have as many

Covered Individuals it determines necessary complete ADMINISTRATOR's annual compliance training to ensure proper compliance.

- 4. If CONTRACTOR elects to have its own compliance program, code of conduct and any Compliance related policies and procedures reviewed by ADMINISTRATOR, then CONTRACTOR shall submit a copy of its compliance program, code of conduct and all relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of execution of this Contract. ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not exceed forty-five (45) calendar days, and determine if CONTRACTOR's proposed compliance program and code of conduct contain all required elements to ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and CONTRACTOR shall revise its compliance program and code of conduct to meet ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's Compliance Officer's determination and resubmit the same for review by ADMINISTRATOR.
- 5. Upon written confirmation from ADMINISTRATOR's compliance officer that CONTRACTOR's compliance program, code of conduct and any compliance related policies and procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals relative to this Contract are made aware of CONTRACTOR's compliance program, code of conduct, related policies and procedures and contact information for ADMINISTRATOR's Compliance Program.
- B. SANCTION SCREENING CONTRACTOR must screen all Covered Individuals employed or retained to provide services related to this Contract to ensure that they are not designated as Ineligible Persons, as pursuant to this Contract. Screening must be conducted against the Social Security Administration's Death Master File at the date of employment. Screening must be conducted monthly against the General Services Administration's Excluded Parties List System or System for Award Management, the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and the California Medi-Cal Suspended and Ineligible Provider List, and/or any other list or system as identified by ADMINISTRATOR.
- 1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items or services or who perform billing or coding functions on behalf of ADMINISTRATOR. CONTRACTOR shall ensure that all Covered Individuals relative to this Contract are made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures (or CONTRACTOR's own compliance program, code of conduct and related policies and procedures if CONTRACTOR has elected to use its own).
 - 2. An Ineligible Person shall be any individual or entity who:
- a. is currently excluded, suspended, debarred or otherwise ineligible to participate in federal and state health care programs; or

- b. has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal and state health care programs after a period of exclusion, suspension, debarment, or ineligibility.
- CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this Contract.
- 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors monthly to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its subcontractors use their best efforts to verify that they are eligible to participate in all federal and State of California health programs and have not been excluded or debarred from participation in any federal or state health care programs, and to further represent to CONTRACTOR that they do not have any Ineligible Person in their employ or under contract.
- 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing services directly relative to this Contract becomes debarred, excluded or otherwise becomes an Ineligible Person.
- 6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Contract.
- 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be immediately removed from participating in any activity associated with this Contract. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by ADMINISTRATOR.
- C. GENERAL COMPLIANCE TRAINING ADMINISTRATOR shall make General Compliance Training available to Covered Individuals.
- 1. CONTRACTORS that have acknowledged to comply with ADMINISTRATOR's Compliance Program shall use its best efforts to encourage completion by all Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated representative to complete the General Compliance Training when offered.
- 2. Such training will be made available to Covered Individuals within thirty (30) calendar days of employment or engagement.

- 3. Such training will be made available to each Covered Individual annually.
- 4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide copies of training certification upon request.
- 5. Each Covered Individual attending a group training shall certify, in writing, attendance at compliance training. ADMINISTRATOR shall provide instruction on group training completion while CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.
- D. SPECIALIZED PROVIDER TRAINING ADMINISTRATOR shall make Specialized Provider Training, where appropriate, available to Covered Individuals.
- 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered Individuals relative to this Contract. This includes compliance with federal and state healthcare program regulations and procedures or instructions otherwise communicated by regulatory agencies; including the Centers for Medicare and Medicaid Services or their agents.
- 2. Such training will be made available to Covered Individuals within thirty (30) calendar days of employment or engagement.
 - 3. Such training will be made available to each Covered Individual annually.
- 4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall provide copies of the certifications upon request.
- 5. Each Covered Individual attending a group training shall certify, in writing, attendance at compliance training. ADMINISTRATOR shall provide instructions on completing the training in a group setting while CONTRACTOR shall retain the certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.
 - E. MEDI-CAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS
- 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner and are consistent with federal, state and county laws and regulations. This includes compliance with federal and state health care program regulations and procedures or instructions otherwise communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or their agents.
- 2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims for payment or reimbursement of any kind.
- 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which accurately describes the services provided and must ensure compliance with all billing and documentation requirements.
- 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in coding of claims and billing, if and when, any such problems or errors are identified.

- 5. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by ADMINISTRATOR.
- 6. CONTRACTOR shall meet the HCA Quality Assessment and Performance Improvement Standards established by Authority and Quality Improvement Services (AQIS) and participate in the quality improvement activities developed in the implementation of the DMC-ODS Quality Management Program. CONTRACTOR shall establish an internal Quality Management program and appoint designated Quality Improvement (QI) staff consisting of at least one dedicated QI coordinator/professional to participate in QI activities with ADMINISTRATOR and to ensure service delivery and support program staff implement QI initiatives and requirements appropriately at the program site.
- 7. CONTRACTOR shall comply with the provisions of ADMINISTRATOR's Cultural Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9, §1810.410.subds.(c)-(d).
- F. Failure to comply with the obligations stated in this Compliance Paragraph shall constitute a breach of the Contract on the part of CONTRACTOR and grounds for COUNTY to terminate the Contract. Unless the circumstances require a sooner period of cure, CONTRACTOR shall have thirty (30) calendar days from the date of the written notice of default to cure any defaults grounded on this Compliance Paragraph prior to ADMINISTRATOR's right to terminate this Contract on the basis of such default.

VI. CONFIDENTIALITY

- A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, as they now exist or may hereafter be amended or changed.
- 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this Contract are clients of the Orange County Behavioral Health services system, and therefore it may be necessary for authorized staff of ADMINISTRATOR to audit Client files, or to exchange information regarding specific Clients with COUNTY or other providers of related services contracting with COUNTY.
- 2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written consents for the release of information from all persons served by CONTRACTOR pursuant to this Contract. Such consents shall be obtained by CONTRACTOR in accordance with CCC, Division 1, Part 2.6, relating to confidentiality of medical information.
- 3. In the event of a collaborative service agreement between Behavioral Health services providers, CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information, from the collaborative agency, for Clients receiving services through the collaborative agreement.

B. Prior to providing any services pursuant to this Contract, all members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns of CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and records which may be obtained in the course of providing such services. This Contract shall specify that it is effective irrespective of all subsequent resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns.

VII. CONFLICT OF INTEREST

CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation shall apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. CONTRACTOR's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence COUNTY staff or elected officers in the performance of their duties.

VIII. COST REPORT

- A. CONTRACTOR shall submit an individual and/or consolidated Cost Report for each Period, or for a portion thereof to COUNTY no later than sixty (60) calendar days following the period for which they are prepared or termination of this Contract. CONTRACTOR shall prepare the individual and/or consolidated Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Contract. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice, which costs and allocations shall be supported by source documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event CONTRACTOR has multiple contracts for mental health services that are administered by HCA, consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as stipulated by ADMINISTRATOR. CONTRACTOR shall submit the consolidated Cost Report to COUNTY no later than five (5) business days following approval by ADMINISTRATOR of all individual Cost Reports to be incorporated into a consolidated Cost Report.
- 1. If CONTRACTOR fails to submit an accurate and complete Cost Report within the time period specified above, ADMINISTRATOR has sole discretion to impose one or both of the following:
- a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each business day after the above specified due date that the accurate and complete Cost Report is not //

submitted. Imposition of the late penalty shall be at the sole discretion of ADMINISTRATOR. The late penalty shall be assessed separately on each outstanding Cost Report due COUNTY by CONTRACTOR.

- b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any or all contracts between COUNTY and CONTRACTOR until such time that the accurate and complete Cost Report is delivered to ADMINISTRATOR.
- 2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the Cost Report setting forth good cause for justification of the request. Approval of such requests shall be at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied. In no case shall extensions be granted for more than seven (7) calendar days.
- 3. In the event that CONTRACTOR does not submit an accurate and complete Cost Report within one hundred and eighty (180) calendar days following the termination of this Contract, and CONTRACTOR has not entered into a subsequent or new contract for any other services with COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Contract shall be immediately reimbursed to COUNTY.
- B. The individual and/or consolidated Cost Report prepared for each period shall be the final financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR for that period. CONTRACTOR shall document that costs are reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The Cost Report shall be the final financial record for subsequent audits, if any.
- C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues and any late penalty, not to exceed the negotiated rate as specified in the Contract. CONTRACTOR shall not claim expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an unreimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30) calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.
- D. If the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, less applicable revenues and late penalty, are lower than the aggregate of interim monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the individual and/or consolidated Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days after submission of the individual and/or consolidated Cost Report, COUNTY may, in addition to any other remedies, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.
- E. If the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, less applicable revenues and late penalty, are higher than the

aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided such payment does not exceed the Amount Not to Exceed of COUNTY.

F. All Cost Reports shall contain the following attestation, which may be typed directly on or attached to the Cost Report:

"I HEREBY CERTII	FY that I have e	xecuted the	e accomp	oanying Co	ost Report and
supporting document	ation prepared b	ру	for	the cost	report period
beginning	_ and ending	ar	ıd that, to	the best of	my knowledge
and belief, costs reim	bursed through th	is Contract	are reas	onable and	allowable and
directly or indirectly re	elated to the service	ces provideo	d and that	this Cost I	Report is a true,
correct, and complete	statement from	the books a	and recor	ds of (pro	vider name) in
accordance with appli	cable instructions	s, except as	noted. I	also hereb	y certify that I
have the authority to e	execute the accom	panying Co	st Report	-	
Signed _					
Name _	_				
Title _					
Date _				<u>"</u>	

IX. DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONTRACTOR certifies that it and its principals:
- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
- 2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- 3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.
- 4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
- 5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, //

suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

- 6. Shall include without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction," (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.
- B. The terms and definitions of this paragraph have the meanings set out in the Definitions and Coverage sections of the rules implementing 51 F.R. 6370.

X. <u>DELEGATION</u>, <u>ASSIGNMENT</u>, <u>AND SUBCONTRACTS</u>

- A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted assignment or delegation in derogation of this paragraph shall be void.
- B. CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's business prior to completion of this Contract, and COUNTY agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume CONTRACTOR's duties and obligations contained in this Contract and complete them to the satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY.
- 1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.
- 2. If CONTRACTOR is a for-profit organization, any change in the business structure, including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or delegation in derogation of this subparagraph shall be void.
- 3. If CONTRACTOR is a governmental organization, any change to another structure, including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an

assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

- 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization, CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the assignment.
- 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization, CONTRACTOR shall provide written notification within thirty (30) calendar days to ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any governing body of CONTRACTOR at one time.
- 6. COUNTY reserves the right to immediately terminate the Contract in the event COUNTY determines, in its sole discretion, that the assignee is not qualified or is otherwise unacceptable to COUNTY for the provision of services under the Contract.
- C. CONTRACTOR's obligations undertaken pursuant to this Contract may be carried out by means of subcontracts, provided such subcontractors are approved in advance by ADMINISTRATOR, meet the requirements of this Contract as they relate to the service or activity under subcontract, include any provisions that ADMINISTRATOR may require, and are authorized in writing by ADMINISTRATOR prior to the beginning of service delivery.
- 1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the subcontractor upon five (5) calendar days' written notice to CONTRACTOR if the subcontractor subsequently fails to meet the requirements of this Contract or any provisions that ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported by CONTRACTOR.
- 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY pursuant to this Contract.
- 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR, amounts claimed for subcontracts not approved in accordance with this paragraph.
- 4. This provision shall not be applicable to service contracts usually and customarily entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional services provided by consultants.
- D. CONTRACTOR shall notify COUNTY in writing of any change in CONTRACTOR's status with respect to name changes that do not require an assignment of the Contract. CONTRACTOR also must notify COUNTY in writing if CONTRACTOR becomes a party to any litigation against COUNTY, or a party to litigation that may reasonably affect CONTRACTOR's performance under the Contract, as well as any potential conflicts of interest between CONTRACTOR and COUNTY that may arise prior to or during the period of Contract performance. While CONTRACTOR must provide this information without prompting from COUNTY any time there is a change in CONTRACTOR's name, conflict of

interest or litigation status, CONTRACTOR must also provide an update to COUNTY of its status in these areas whenever requested by COUNTY.

XI. DISPUTE RESOLUTION

- A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by CONTRACTOR and ADMINISTRATOR, such matter shall be brought to the attention of the COUNTY Purchasing Agent by way of the following process:
- 1. CONTRACTOR shall submit to the COUNTY Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless COUNTY, on its own initiative, has already rendered such a final decision.
- 2. CONTRACTOR's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, CONTRACTOR shall include with the demand a written statement signed by an authorized representative indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which CONTRACTOR believes COUNTY is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, CONTRACTOR must proceed diligently with the performance of services secured via this Contract, including the delivery of goods and/or provision of services. CONTRACTOR's failure to proceed diligently shall be considered a material breach of this Contract.
- C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY does not render a decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final decision adverse to CONTRACTOR's contentions.
- D. This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

XII. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR attests that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Contract meet the citizenship or alien status requirements set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment

eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, subcontractors, and consultants for the period prescribed by the law.

XIII. EQUIPMENT

- A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by ADMINISTRATOR to assist in performing the services described in this Contract. "Relatively Permanent" is defined as having a useful life of one (1) year or longer. Equipment which costs \$5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contain PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Contract shall be depreciated according to GAAP.
- B. CONTRACTOR shall obtain ADMINISTRATOR's written approval prior to purchase of any Equipment with funds paid pursuant to this Contract. Upon delivery of Equipment, CONTRACTOR shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.
- C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To "expense," in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with COUNTY.
- D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Contract, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if any.
- E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any or all Equipment to COUNTY.
- F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure approved by ADMINISTRATOR and the Notices Paragraph of this Contract. In addition,

CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of Equipment are moved from one location to another or returned to COUNTY as surplus.

- G. Unless this Contract is followed without interruption by another contract between the Parties for substantially the same type and scope of services, at the termination of this Contract for any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this Contract.
- H. CONTRACTOR shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

XIV. FACILITIES, PAYMENTS AND SERVICES

- A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance with this Contract. COUNTY shall compensate, and authorize, when applicable, said services. CONTRACTOR shall operate continuously throughout the term of this Contract with at least the minimum number and type of staff which meet applicable federal and state requirements, and which are necessary for the provision of the services hereunder.
- B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Amount Not to Exceed for the appropriate Period as well as the Total Amount Not to Exceed. The reduction to the Amount Not to Exceed for the appropriate Period as well as the Total Amount Not to Exceed shall be in an amount proportionate to the number of days in which CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.

XV. <u>INDEMNIFICATION AND IN</u>SURANCE

- A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this Contract. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- B. Prior to the provision of services under this Contract, CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Contract have been complied with. CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance (COI), and

endorsements on deposit with COUNTY during the entire term of this Contract. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

- C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall be covered under CONTRACTOR's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from CONTRACTOR under this Contract. It is the obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CONTRACTOR through the entirety of this Contract for inspection by COUNTY representative(s) at any reasonable time.
- D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:
- 1. In addition to the duty to indemnify and hold COUNTY harmless against any and all liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or subcontractor's performance of this Contract, CONTRACTOR shall defend COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and CONTRACTOR's SIR provision shall be interpreted as though CONTRACTOR was an insurer and COUNTY was the insured.
- E. If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this Contract, COUNTY may terminate this Contract.

F. QUALIFIED INSURER

- 1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A-(Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).
- 2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles (4 passengers or less)	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims -made
Technology Errors & Omissions	\$1,000,000 per claims -made \$1,000,000 aggregate
Professional Liability Insurance	\$1,000,000 per claims -made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

H. REQUIRED COVERAGE FORMS

- 1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a substitute form providing liability coverage at least as broad.
- 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

I. REQUIRED ENDORSEMENTS

- 1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:
- a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, agents and employees //

as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

- b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- 2. The Network Security and Privacy Liability policy shall contain the following endorsements, which shall accompany the COI:
- a. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.
- b. A primary and non-contributing endorsement evidencing that CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- J. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.
- K. All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.
- L. CONTRACTOR shall notify COUNTY in writing within thirty (30) calendar days of any policy cancellation and within ten (10) calendar days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate this Contract.
- M. If CONTRACTOR's Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims -Made" policies: CONTRACTOR shall agree to the following:
- 1. The retroactive date must be shown and must be before the date of the Contract or the beginning of the contract services.
- 2. Insurance must be maintained, and evidence of insurance must be provided, for at least three (3) years after expiration or earlier termination of the Contract.
- 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract services, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.
- N. The Commercial General Liability policy shall contain a "severability of interests" clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

- O. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.
- P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable COI and endorsements with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.
- Q. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

R. SUBMISSION OF INSURANCE DOCUMENTS

- 1. The COI and endorsements shall be provided to COUNTY as follows:
 - a. Prior to the start date of this Contract.
 - b. No later than the expiration date for each policy.
- c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.
- 2. The COI and endorsements shall be provided to COUNTY at the address as specified in the Referenced Contract Provisions of this Contract.
- 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance provisions stipulated in this Contract by the above specified due dates, ADMINISTRATOR shall have sole discretion to impose one or both of the following:
- a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any and all contracts between COUNTY and CONTRACTOR until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to ADMINISTRATOR.
- b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late COI or endorsement for each business day, pursuant to any and all contracts between COUNTY and CONTRACTOR, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to ADMINISTRATOR.
- c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from CONTRACTOR's monthly invoice.
- 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

XVI. <u>INSPECTIONS AND AUDITS</u>

- A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall to the extent permissible under applicable law have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, medical and Client records, of CONTRACTOR that are directly pertinent to this Contract, for the purpose of responding to a Client complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Contract. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Contract, and the premises in which they are provided.
- B. CONTRACTOR shall actively participate and cooperate with any person specified in Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this Contract, and shall provide the above–mentioned persons adequate office space to conduct such evaluation or monitoring.

C. AUDIT RESPONSE

- 1. Following an audit report, in the event of non-compliance with applicable laws and regulations governing funds provided through this Contract, COUNTY may terminate this Contract as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement appropriate corrective action. A CAP shall be submitted to ADMINISTRATOR in writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.
- 2. If the audit reveals that money is payable from one Party to the other, that is, reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said funds shall be due and payable from one Party to the other within sixty (60) calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.
- D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare an annual Single Audit as required by 31 USC 7501 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. CONTRACTOR shall forward the Single Audit to ADMINISTRATOR within fourteen (14) calendar days of receipt.
- E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Contract.

XVII. <u>LICENSES AND LAWS</u>

- A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Contract, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be cause for termination of this Contract.
- B. CONTRACTOR shall comply with all applicable governmental laws, regulations, and requirements as they exist now or may be hereafter amended or changed. These laws, regulations, and requirements shall include, but not be limited to, the following:
 - 1. ARRA of 2009.
 - 2. Trafficking Victims Protection Act of 2000.
 - 3. Title 22, CCR, §51009, Confidentiality of Records.
 - 4. California Welfare and Institutions Code, §14100.2, Medicaid Confidentiality.
 - 5. D/MC Certification Standards for Substance Abuse Clinics, July 2004.
 - 6. D/MC Billing Manual (March 23, 2010).
 - 7. Federal Medicare Cost reimbursement principles and cost reporting standards.
- 8. State of California-Health and Human Services Agency, Department of Health Care Services, MHSD, Medi-Cal Billing Manual, October 2013.
 - 9. Orange County Medi-Cal Mental Health Managed Care Plan.
 - 10. 42 CFR, Section 438, Managed Care Regulations
- 11. Short-Doyle/Medi-Cal Manual for the Rehabilitation Option and Targeted Case Management.
- 12. Short-Doyle/Medi-Cal Modifications/Revisions for the Rehabilitation Option and Targeted Case Management Manual, including DMH Letter 94-14, dated July 7, 1994, DMH Letter No. 95-04, dated July 27, 1995, DMH Letter 96-03, dated August 13, 1996.
 - 13. WIC, Division 5, Community Mental Health Services.
 - 14. WIC, Division 6, Admissions and Judicial Commitments.
 - 15. WIC, Division 7, Mental Institutions.
 - 16. HSC, §§1250 et seg., Health Facilities.
 - 17. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
 - 18. CCR, Title 9, Rehabilitative and Developmental Services.
 - 19. CCR, Title 17, Public Health.
 - 20. CCR, Title 22, Social Security.
 - 21. CFR, Title 42, Public Health.

- 22. CFR, Title 45, Public Welfare.
- 23. USC Title 42. Public Health and Welfare.
- 24. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 25. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 26. 42 USC §1857, et seq., Clean Air Act.
- 27. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 28. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 29. Policies and procedures set forth in Mental Health Services Act.
- 30. Policies and procedures set forth in DHCS Letters.
- 31. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.
- 32. 31 USC 7501 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - 33. 42 CFR, Section 438, Managed Care Regulations
- C. CONTRACTOR shall at all times be capable and authorized by the State of California to provide treatment and bill for services provided to Medi-Cal eligible Clients while working under the terms of this Contract.
- D. CONTRACTOR shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which CONTRACTOR offers services to non-Medi-Cal beneficiaries. If CONTRACTOR only serves Medi-Cal beneficiaries, CONTRACTOR shall have hours of operation that are comparable to the hours CONTRACTOR makes available for Medi-Cal services that are not covered by COUNTY or another Mental Health Plan.

XVIII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

- A. Any written information or literature, including educational or promotional materials, distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related to this Contract must be approved at least thirty (30) calendar days in advance and in writing by ADMINISTRATOR before distribution. For the purposes of this Contract, distribution of written materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such as the Internet.
- B. Any advertisement through radio, television broadcast, or the Internet, for educational or promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this Contract must be approved in advance at least thirty (30) calendar days and in writing by ADMINISTRATOR.
- C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) in support of the services described within this Contract, CONTRACTOR shall develop social media policies and procedures and have them available to ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media used to either directly or indirectly support the services described within this Contract. CONTRACTOR shall

comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. CONTRACTOR shall also include any required funding statement information on social media when required by ADMINISTRATOR.

D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by COUNTY, unless ADMINISTRATOR consents thereto in writing.

XIX. AMOUNT NOT TO EXCEED

- A. The Total Amount Not to Exceed of COUNTY for services provided in accordance with this Contract, and the separate Amount Not to Exceed for each period under this Contract, are as specified in the Referenced Contract Provisions of this Contract.
- B. Upon written request by CONTRACTOR, and at sole discretion of ADMINISTRATOR, ADMINISTRATOR may increase or decrease the Period One, Period Two or Period Three Amount Not to Exceed, provided the total of these Amount Not to Exceed does not exceed the Total Amount Not to Exceed of COUNTY as specified in the Referenced Contract Provisions of this Contract.
- C. ADMINISTRATOR may amend the Amount Not to Exceed by an amount not to exceed ten percent (10%) of the original Period One funding for this Contract.

XX. MINIMUM WAGE LAWS

- A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its Covered Individuals (as defined within the "Compliance" paragraph of this Contract) that directly or indirectly provide services pursuant to this Contract, in any manner whatsoever. CONTRACTOR shall require and verify that all of its Covered Individuals providing services pursuant to this Contract be paid no less than the greater of the federal or California Minimum Wage.
- B. CONTRACTOR shall comply and verify that its Covered Individuals comply with all other federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to providing services pursuant to this Contract.
- C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR, where applicable, shall comply with the prevailing wage and related requirements, as provided for in accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

XXI. NONDISCRIMINATION

A. EMPLOYMENT

1. During the term of this Contract, CONTRACTOR and its Covered Individuals (as defined in the "Compliance" paragraph of this Contract) shall not unlawfully discriminate against any employee or

applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term of this Contract, CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

- 2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.
- 3. CONTRACTOR shall not discriminate between employees with spouses and employees with domestic partners, or discriminate between domestic partners and spouses of those employees, in the provision of benefits.
- 4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices from ADMINISTRATOR and/or the United States Equal Employment Opportunity Commission setting forth the provisions of the EOC.
- 5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed fulfilled by use of the term EOE.
- 6. Each labor union or representative of workers with which CONTRACTOR and/or subcontractor has a collective bargaining contract or other contract or understanding must post a notice advising the labor union or workers' representative of the commitments under this Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.
- B. SERVICES, BENEFITS AND FACILITIES CONTRACTOR and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the CCR; and Title II of the Genetic Information Nondiscrimination Act of

2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination paragraph, discrimination includes, but is not limited to the following based on one or more of the factors identified above:

- 1. Denying a Client or potential Client any service, benefit, or accommodation.
- 2. Providing any service or benefit to a Client which is different or is provided in a different manner or at a different time from that provided to other Clients.
- 3. Restricting a Client in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service and/or benefit.
- 4. Treating a Client differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service and/or benefit.
 - 5. Assignment of times or places for the provision of services.
- C. COMPLAINT PROCESS CONTRACTOR shall establish procedures for advising all Clients through a written statement that CONTRACTOR's and/or subcontractor's Clients may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR.
- 1. Whenever possible, problems shall be resolved at the point of service. CONTRACTOR shall establish an internal informal problem resolution process for Clients not able to resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with CONTRACTOR either orally or in writing.
- a. COUNTY shall establish a formal resolution and grievance process in the event informal processes do not yield a resolution.
- b. Throughout the problem resolution and grievance process, Client rights shall be maintained, including access to the COUNTY's Patients' Rights Office at any point in the process. Clients shall be informed of their right to access the COUNTY's Patients' Rights Office at any time.
- 2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, has the right to request a State Fair Hearing.
- D. PERSONS WITH DISABILITIES CONTRACTOR and/or subcontractor agree to comply with the provisions of \$504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities, and if applicable as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together with succeeding legislation.

- E. RETALIATION Neither CONTRACTOR nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.
- F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state law, this Contract may be canceled, terminated or suspended in whole or in part and CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal, state or COUNTY funds.

XXII. NOTICES

- A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Contract shall be effective:
- 1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by ADMINISTRATOR;
 - 2. When faxed, transmission confirmed;
 - 3. When sent by Email; or
- 4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.
- B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by ADMINISTRATOR and shall be effective when faxed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.
- C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR.
- D. For purposes of this Contract, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

XXIII. NOTIFICATION OF DEATH

- A. Upon becoming aware of the death of any person served pursuant to this Contract, CONTRACTOR shall immediately notify ADMINISTRATOR.
- B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain the name of the deceased, the date and time of death, the nature and circumstances of the death, and the name(s) of CONTRACTOR's officers or employees with knowledge of the incident.

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Contract; notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

- a. NON-TERMINAL ILLNESS CONTRACTOR shall hand deliver, fax, and/or send via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming aware of the death due to non-terminal illness of any person served pursuant to this Contract.
- b. TERMINAL ILLNESS CONTRACTOR shall notify ADMINISTRATOR by written report hand delivered, faxed, sent via encrypted email, within forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant to this Contract.
- c. When notification via encrypted email is not possible or practical, CONTRACTOR may hand deliver or fax to a known number said notification.
- C. If there are any questions regarding the cause of death of any person served pursuant to this Contract who was diagnosed with a terminal illness, or if there are any unusual circumstances related to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this Notification of Death Paragraph.
- D. All death reports must be verified by the coroner's office. The information should include date of the death as well as the cause of death.

XXIV. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

- A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in whole or in part by COUNTY, except for those events or meetings that are intended solely to serve Clients or occur in the normal course of business.
- B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance of any applicable public event or meeting. The notification must include the date, time, duration, location and purpose of the public event or meeting. Any promotional materials or event related flyers must be approved by ADMINISTRATOR prior to distribution.

XXV. PAYMENT CARD COMPLIANCE

Should CONTRACTOR conduct credit/debit card transactions in conjunction with their business with COUNTY, on behalf of COUNTY, or as part of the business that they conduct, CONTRACTOR covenants and warrants that it is currently PA DSS and PCI DSS compliant and will remain compliant during the entire duration of this Contract. CONTRACTOR agrees to immediately notify COUNTY in the event CONTRACTOR should ever become non-compliant, and will take all necessary steps to return to compliance and shall be compliant within ten (10) business days of the commencement of any such interruption. Upon demand by COUNTY, CONTRACTOR shall provide to COUNTY written certification of CONTRACTOR's PA DSS and/or PCI DSS compliance.

XXVI. RECORDS MANAGEMENT AND MAINTENANCE

- A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Contract, prepare, maintain and manage records appropriate to the services provided and in accordance with this Contract and all applicable requirements.
- 1. CONTRACTOR shall maintain records that are adequate to substantiate the services for which claims are submitted for reimbursement under this Contract and the charges thereto. Such records shall include, but not be limited to, individual patient charts and utilization review records.
- 2. CONTRACTOR shall keep and maintain records of each service rendered to each MSN Patient, the identity of the MSN Patient to whom the service was rendered, the date the service was rendered, and such additional information as ADMINISTRATOR or DHCS may require.
- 3. CONTRACTOR shall maintain books, records, documents, accounting procedures and practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature claimed to have been incurred in the performance of this Contract and in accordance with Medicare principles of reimbursement and GAAP.
- 4. CONTRACTOR shall ensure the maintenance of medical records required by §70747 through and including §70751 of the CCR, as they exist now or may hereafter be amended, the medical necessity of the service, and the quality of care provided. Records shall be maintained in accordance with §51476 of Title 22 of the CCR, as it exists now or may hereafter be amended.
- B. CONTRACTOR shall implement and maintain administrative, technical and physical safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of PHI in violation of the HIPAA, federal and state regulations. CONTRACTOR shall mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in violation of federal or state regulations and/or COUNTY policies.
- C. CONTRACTOR's Client records shall be maintained in a secure manner. CONTRACTOR shall maintain Client records and must establish and implement written record management procedures.
- D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the termination of the Contract, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.
- E. CONTRACTOR shall retain all Client medical records for ten (10) years following discharge of the Client.
- F. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges, billings, and revenues available at one (1) location within the limits of Orange County. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide written approval to CONTRACTOR to maintain records in a single location, identified by CONTRACTOR.
- G. CONTRACTOR shall notify ADMINISTRATOR of any PRA requests related to, or arising out of, this Contract, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR all information that is requested by the PRA request.

- H. CONTRACTOR shall ensure all HIPAA DRS requirements are met. HIPAA requires that Clients be provided the right to access or receive a copy of their DRS and/or request addendum to their records. Title 45 CFR §164.501, defines DRS as a group of records maintained by or for a covered entity that is:
- 1. The medical records and billing records about individuals maintained by or for a covered health care provider;
- 2. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - 3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.
- I. CONTRACTOR may retain Client documentation electronically in accordance with the terms of this Contract and common business practices. If documentation is retained electronically, CONTRACTOR shall, in the event of an audit or site visit:
- 1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit or site visit.
 - 2. Provide auditor or other authorized individuals access to documents via a computer terminal.
- 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if requested.
- J. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and security of PII and/or PHI. CONTRACTOR shall, upon discovery of a Breach of privacy and/or security of PII and/or PHI by CONTRACTOR, notify federal and/or state authorities as required by law or regulation, and copy ADMINISTRATOR on such notifications.
- K. CONTRACTOR may be required to pay any costs associated with a Breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification. CONTRACTOR shall pay any and all such costs arising out of a Breach of privacy and/or security of PII and/or PHI.

XXVII. RESEARCH AND PUBLICATION

CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out of, or developed, as a result of this Contract for the purpose of personal or professional research, or for publication.

XXVIII. REVENUE

A. CLIENT FEES – CONTRACTOR shall charge, unless waived by ADMINISTRATOR, a fee to Clients to whom billable services, other than those amounts reimbursed by Medicare, Medi-Cal or other third party health plans, are provided pursuant to this Contract, their estates and responsible relatives, according to their ability to pay as determined by the State Department of Health Care Services' "Uniform Method of Determining Ability to Pay" procedure or by any other payment procedure as approved in advance, and in writing by ADMINISTRATOR; and in accordance with Title 9 of the CCR. Such fee

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shall not exceed the actual cost of services provided. No Client shall be denied services because of an inability to pay.

- B. THIRD-PARTY REVENUE CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Contract may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR's usual and customary charges.
- C. PROCEDURES CONTRACTOR shall maintain internal financial controls which adequately ensure proper billing and collection procedures. CONTRACTOR's procedures shall specifically provide for the identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are billed, collected, transferred to a collection agency, or deemed by CONTRACTOR to be uncollectible.
- D. OTHER REVENUES CONTRACTOR shall charge for services, supplies, or facility use by persons other than individuals or groups eligible for services pursuant to this Contract.

XXIX. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Contract or application thereof to any person or circumstances to be invalid or if any provision of this Contract contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Contract or the application thereof shall remain valid, and the remaining provisions of this Contract shall remain in full force and effect, and to that extent the provisions of this Contract are severable.

XXX. SPECIAL PROVISIONS

- A. CONTRACTOR shall not use the funds provided by means of this Contract for the following purposes:
 - 1. Making cash payments to intended recipients of services through this Contract.
- 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
 - 3. Fundraising.
- 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body.
- 5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing body for expenses or services.
- 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR's staff.

- 7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
 - 8. Severance pay for separating employees.
- 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.
 - 10. Supplanting current funding for existing services.
- B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Contract for the following purposes:
 - 1. Funding travel or training (excluding mileage or parking).
- 2. Making phone calls outside of the local area unless documented to be directly for the purpose of Client care.
 - 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Contract.
- 5. Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.
 - 6. Providing inpatient hospital services or purchasing major medical equipment.
- 7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal funds (matching).
- 8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's Clients.

XXXI. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Contract. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Contract shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner to be COUNTY's employees.

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XXXII. TERM

A. The term of this Contract shall commence as specified in the Referenced Contract Provisions of this Contract or the execution date, whichever is later. This Contract shall terminate as specified in the Referenced Contract Provisions of this Contract unless otherwise sooner terminated as provided in this Contract. CONTRACTOR shall perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting, and accounting.

B. Any administrative duty or obligation to be performed pursuant to this Contract on a weekend or holiday may be performed on the next regular business day.

XXXIII. TERMINATION

- A. COUNTY may terminate this Contract, without cause, upon thirty (30) calendar days' written notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Contract.
- B. Unless otherwise specified in this Contract, COUNTY may terminate this Contract upon five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this Contract. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty (30) calendar days for corrective action pursuant to a CAP.
- 1. CONTRACTOR must meet all programmatic and administrative contracted objectives and requirements as indicated in this Contract. CONTRACTOR may be subject to the issuance of a CAP, in ADMINISTRATOR's sole discretion, for the failure to perform to the level of contracted objectives and requirements, continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed within timeframe as determined by ADMINISTRATOR notice, payments may be reduced or withheld until CAP is resolved and/or the Contract may be terminated.
- C. COUNTY may terminate this Contract immediately, upon written notice, on the occurrence of any of the following events:
 - 1. The loss by CONTRACTOR of legal capacity.
 - 2. Cessation of services.
- 3. The delegation or assignment of CONTRACTOR's services, operation or administration to another entity without the prior written consent of COUNTY.
- 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty required pursuant to this Contract.
- 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this Contract.
- 6. The continued incapacity of any physician or licensed person to perform duties required pursuant to this Contract.

7. Unethical conduct or malpractice by any physician or licensed person providing services pursuant to this Contract; provided, however, COUNTY may waive this option if CONTRACTOR removes such physician or licensed person from serving persons treated or assisted pursuant to this Contract.

D. CONTINGENT FUNDING

- 1. Any obligation of COUNTY under this Contract is contingent upon the following:
- a. The continued availability of federal, state and county funds for reimbursement of COUNTY's expenditures, and
- b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s) approved by the Board of Supervisors.
- 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend, terminate or renegotiate this Contract upon thirty (30) calendar days' written notice given CONTRACTOR. If COUNTY elects to renegotiate this Contract due to reduced or terminated funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.
- E. In the event this Contract is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Contract, ADMINISTRATOR may, at its sole discretion, reduce the Total Amount Not to Exceed of this Contract in an amount consistent with the reduced term of the Contract.
- F. In the event this Contract is terminated by either Party pursuant to this Contract, CONTRACTOR shall do the following:
- 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of quality care and prudent business practice.
- 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract performance during the remaining contract term.
- 3. Until the date of termination, continue to provide the same level of service required by this Contract.
- 4. If Clients are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all Client information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.
- 5. Assist ADMINISTRATOR in effecting the transfer of Clients in a manner consistent with Client's best interests.
- 6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.
- 7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and supplies purchased with funds provided by COUNTY.
- 8. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding

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commitments which relate to personal services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.

9. Provide written notice of termination of services to each Client being served under this Contract, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendar day period.

XXXIV. THIRD-PARTY BENEFICIARY

Neither Party hereto intends that this Contract shall create rights hereunder in third–parties including, but not limited to, any subcontractors or any Clients provided services pursuant to this Contract.

XXXV. WAIVER OF DEFAULT OR BREACH

Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this Contract shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any default or any breach by CONTRACTOR shall not be considered a modification of the terms of this Contract.

EXODUS RECOVERY INC.

IN WITNESS WHEREOF, the parties have executed this Contract, in the County of Orange, State of California.

BY: Usara Murphy 4743F7D2D8874D8	DATED:9/5/2024
TITLE: President/CEO	
BY:	DATED:
TITLE:	
COUNTY OF ORANGE	
BY: Susan Kessel B783E6DAF812463 HEALTH CARE AGENCY	DATED: 9/17/2024
APPROVED AS TO FORM OFFICE OF THE COUNTY COUNSEL ORANGE COUNTY, CALIFORNIA	
Signed by:	

If CONTRACTOR is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. If the Contract is signed by one (1) authorized individual only, a copy of the corporate resolution or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her signature alone is required by ADMINISTRATOR.

DATED:

EXHIBIT A

TO CONTRACT FOR PROVISION OF CRISIS STABILIZATION SERVICES AND CRISIS RESIDENTIAL SERVICES BETWEEN

COUNTY OF ORANGE

AND

EXODUS RECOVERY INC.

SEPTEMBER 19, 2024 THROUGH JUNE 30, 2027

I. COMMON TERMS AND DEFINITIONS

- A. The Parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Contract.
- 1. Access log means data that is immediately entered into IRIS after the Client has been screened for an appointment to access services to ensure timely access to MHP services.
- 2. <u>Admission</u> means documentation, by CONTRACTOR, for completion of entry and evaluation services, provided to Clients seen in COUNTY and COUNTY-contracted services, into IRIS.
- 3. <u>Authorizations</u> means a unique individual's complete utilization management (UM) process, which includes reviewing clinical documents when clinically indicated, evaluating medical necessity and formally deciding to authorize/deny additional inpatient psychiatric services, that lasts for the duration of the inpatient stay, i.e. initial admission notification to discharge, aftercare planning, whichever comes first.
- 4. <u>Bed Day</u> means one (1) calendar day during which CONTRACTOR provides Crisis Residential Services within the Mental Health Plan as described in this Exhibit A of the Contract. If admission and discharge occur on the same day, one (1) Bed Day will be charged.
- 5. <u>Care Coordination</u> means services that assist a Client to access needed medical, educational, social, prevocational, vocational, rehabilitative, or other community services. This definition applies to programs under the DMC-ODS and MHP.
- 6. <u>Case Management</u> means the activities of managing services and coordinating care to Clients, including assessments, referrals, service planning, linkage consultation, discharge planning and coordination.
- 7. <u>CAT</u> means Crisis Assessment Team which provides twenty-four (24) hour mobile response services to anyone who has a psychiatric emergency. This program assists law enforcement, social service agencies, and families in providing crisis intervention services for the mentally ill. CAT is a multi-disciplinary program that conducts risk assessments, initiates involuntary hospitalizations, and provides linkage, follow ups for Clients evaluated. There are separate adult and youth CATs.
- 8. <u>Client or Individual</u> means a person who is referred or enrolled, for services under the Contract who is living with mental, emotional, or behavioral disorders.

- 9. <u>Client-directed</u> means services delivered in a therapeutic alliance between providers and Clients where both are partners in goal setting and treatment planning. The final decision for treatment options rests with the Client and designated family members
- 10. <u>Client Satisfaction Surveys</u> means surveys to measure Clients' overall satisfaction with Mental Health Services, and with specific aspects of those services in order to identify problems and opportunities for improvement
- 11. <u>Client Support System/Family</u> means immediate family members, extended family members, significant others or other supports designated by the Client.
- 12 <u>Closed-loop referral</u> means the people, processes and technologies that are deployed to coordinate and refer Clients to available community resources (i.e., health care, behavioral health services, and/or other support services) and follow-up to verify if services were rendered.
- 13. <u>Clinical Documents</u> means any clinical information, documentation or data collected from the service provider for purposes of conducting concurrent review and coordinating treatment.
- 14. <u>Completion</u> means the completion of a program whereby the Client has made adequate progress in treatment and no longer meets medical necessity for the Level of Care.
- 15. <u>Concurrent Review</u> means the review of treatment authorization requests for inpatient mental health services by providers in order to approve, modify, or deny requests based on medical necessity. The review of the treatment authorization requests is concurrent with the provision of services and is required after the first day of admission through discharge.
- 16. <u>Contract Monitor</u> means a person designated by COUNTY to consult with and assist both CONTRACTOR and any contractor providers in the provision of services to COUNTY Clients as specified herein. The Contract Monitor shall at no time be construed as being ADMINISTRATOR.
- 17. <u>Co-Occurring</u> means a person has at least one substance use disorder and one mental health disorder that can be diagnosed independently of each other.
- 18. <u>Credentialing</u> means a review process conducted by ADMINISTRATOR, including a peer review process, based upon specific criteria, standards and prerequisites, to approve a provider or professional who applies to be contracted to provide care in a hospital, clinic, medical group or in a health plan.
- 19. <u>Crisis Stabilization Unit (CSU)</u> means a behavioral health crisis stabilization program that operates 24 hours a day that serves Orange County residents, aged 13 and older, who are experiencing behavioral health crises that cannot wait until regularly scheduled appointments. Crisis Stabilization services include psychiatric evaluations provided by Doctors of Medicine (MD), Nurse Practitioners (NP), Doctors of Osteopathic Medicine (DO), counseling/therapy provided by Licensed Clinical Social Workers or Marriage Family Therapists or registered/waivered clinicians, nursing assessments, collateral services that include consultations with family, significant others and outpatient providers, client and family education, crisis intervention services, basic medical services, medication services, and referrals and linkages to the appropriate level of continuing care and community services, including Peer Specialist and

Peer Mentoring services. As a designated outpatient facility, the CSU may evaluate and treat Clients for no longer than 23 hours and 59 minutes. The primary goal of the CSU is to help stabilize the crises and begin treating Clients in order to refer them to the most appropriate, least restrictive, non-hospital setting when indicated or to facilitate admission to psychiatric inpatient units when the need for this level of care is present. The CSU must meet state and local regulatory requirements.

- 20. <u>CYS</u> means the division of Behavioral Health Services responsible for the administration and oversight of Mental Health Services to children and adolescents.
- 21. <u>Diagnosis</u> means identifying the nature of a disorder. When formulating a Diagnosis(es), CONTRACTOR shall use the diagnostic codes as specified in the most current edition of the Diagnostic 3 and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association and/or ICD 10. ICD10 diagnoses will be recorded on all IRIS documents, as appropriate.
- 22. <u>DSH</u> means Direct Service Hours and refers to a measure in minutes that a clinician spends providing Client services. DSH credit is obtained for providing mental health, case management, medication support and a crisis intervention service to any Client open in IRIS, which includes both billable and non-billable services.
- 23. <u>Engagement</u> means the process where a trusting relationship is developed over a short period of time with the goal to link the Client(s) to appropriate services within the community. Engagement is the objective of a successful outreach.
- 24. <u>Face-to-Face</u> means an encounter between the Client/parent/guardian and CONTRACTOR where they are both physically present. This does not include contact by phone, email, etc., except for Telepsychiatry provided in a manner that meets COUNTY protocols.
- 25. <u>Family Member</u> means any traditional or non-traditional support system, significant other or natural support designated by the Client.
- 26. <u>Head of Service</u> means an individual ultimately responsible for overseeing the program and is required to be licensed as a mental health professional.
- 27. <u>Health Care Practitioner (HCP)</u> means a person duly licensed and regulated under Division 2 (commencing with Section 500) of the Business and Professions Code, who is acting within the scope of their license or certificate.
- 28. <u>Intake</u> means the initial face-to-face meeting between a Client and CONTRACTOR staff in which specific information about the Client is gathered including the ability to pay and standard admission forms pursuant to this Contract.
- 29. <u>Integrated Records Information System (IRIS)</u> means COUNTY's database system and refers to a collection of applications and databases that serve the needs of programs within COUNTY and includes functionality such as registration and scheduling, laboratory information system, billing and reporting capabilities, compliance with regulatory requirements, electronic medical records, and other relevant applications.

- 30. <u>Lanterman–Petris–Short (LPS) Act</u> (Cal. Welf & Inst. Code, sec. 5000 et seq.) provides guidelines for handling involuntary civil commitment to a mental health institution in the State of California.
- 31. <u>Licensed Clinical Social Worker (LCSW)</u> means a licensed individual, pursuant to the provisions of Chapter 14 of the California Business and Professions Code, who can provide clinical services to individuals they serve. The license must be current and in force, and has not been suspended or revoked. Also, it is preferred that the individual has at least one (1) year of experience treating TAY.
- 32. <u>Licensed Marriage Family Therapist (MFT)</u> means a licensed individual, pursuant to the provisions of Chapter 13 of the California Business and Professions Code, pursuant to the provisions of Chapter 14 of the California Business and Professions Code, who can provide clinical services to individuals they serve. The license must be current and in force, and has not been suspended or revoked. Also, it is preferred that the individual has at least one (1) year of experience treating TAY.
- 33. <u>Licensed Professional Clinical Counselor (LPCC)</u> means a licensed individual, pursuant to the provisions of Chapter 13 of the California Business and Professions Code, pursuant to the provisions of Chapter 16 of the California Business and Professions Code, who can provide clinical service to individuals they serve. The license must be current and in force, and has not been suspended or revoked. Also, it is preferred that the individual has at least one (1) year of experience treating TAY.
- 34. <u>Licensed Psychiatric Technician (LPT)</u> means a licensed individual, pursuant to the provisions of Chapter 10 of the California Business and Professions Code, who can provide clinical services to individuals they serve. The license must be current and in force, and has not been suspended or revoked. Also, it is preferred that the individual has at least one (1) year of experience treating TAY.
- 35. <u>Licensed Psychologist</u> means a licensed individual, pursuant to the provisions of Chapter 6.6 of the California Business and Professions Code, who can provide clinical services to individuals they serve. The license must be current and in force, and has not been suspended or revoked. Also, it is preferred that the individual has at least one (1) year of experience treating TAY.
- 36. <u>Licensed Vocational Nurse (LVN)</u> means a licensed individual, pursuant to the provisions of Chapter 6.5 of the California Business and Professions Code, who can provide clinical services to individuals they serve. The license must be current and in force, and has not been suspended or revoked. Also, it is preferred that the individual has at least one (1) year of experience treating TAY.
- 37. <u>Linkage</u> means when a Client has attended at least one appointment or made one visit to the identified program or service for which the Client has received a referral or to which they have self-referred.
- 38. <u>Live Scan</u> means an inkless, electronic fingerprint which is transmitted directly to the Department of Justice (DOJ) for the completion of a criminal record check, typically required of employees who have direct contact with the individuals served.
- 39. <u>Medi-Cal</u> means the State of California's implementation of the federal Medicaid health care program which pays for a variety of medical services for children and adults who meet eligibility criteria.

- 40. <u>Medi-Cal Certified Peer Specialists</u> means an individual in a paid position who has been through the same or similar Recovery process as those being assisted to attain their Recovery goals. A Certified Peer Specialist practice is informed by personal experience.
- 41. <u>Medical Necessity</u> means that a service is medically necessary if it is needed in order to address a particular mental health condition. Four parts must be present to meet the criteria for medical necessity: 1) a covered diagnosis per COUNTY's MHP, 2) an impairment as a result of the disorder that affects Client's ability to function individually or in the community, 3) the intervention needed must be focused on addressing the impairment, and 4) the intervention must meet specialty mental health service criteria (i.e., the condition being treated would be responsive to mental health treatment, but would not be responsive to physical health care based treatment).
- 42. <u>Medication Services</u> means face-to-face or telehealth/telephone services provided by a licensed physician, licensed psychiatric nurse practitioner, or other qualified medical staff. This service shall include documentation of the clinical justification for use of the medication, dosage, side effects, compliance, and response to medication.
- 43. The Behavioral Health Services Act (BHSA) means a voter-approved initiative to develop a comprehensive approach to providing community-based behavioral health services and supports for California residents.
- 44. <u>MHP</u> means COUNTY as the MHP Manager with COUNTY clinics as well as COUNTY contracted clinics, including CONTRACTOR, being providers in the Plan.
- 45. <u>Mental Health Services</u> means interventions designed to provide the maximum reduction of mental disability and restoration or maintenance of functioning consistent with the requirements for learning, development, and enhanced self-sufficiency. Services shall include:
- a. Assessment/Mental Health Evaluation means services designed to provide formal, documented evaluation or analysis of the cause or nature of a Client's mental, emotional, or behavioral disorders. The Parties understand that such services shall be primarily limited to initial telephone intake examinations to triage and refer the Client to a Network Provider who shall develop the treatment/service plan. Cultural issues should be addressed where appropriate. Additionally, this evaluation should include an appraisal of the individual's community functioning in several areas including living situation, daily activities, social support systems and health status.
- b. Collateral Therapy means face-to-face or telephone contact(s) with significant others in the life of the Client necessary to meet the mental health needs of the Client.
- c. Family Therapy means a clinical service that includes family members identified by the Client in the treatment process, providing education about factors important to the Client's treatment as well as holistic recovery of the family system.
- d. Individual Therapy means a goal directed face-to-face therapeutic intervention with the Client which focuses on the mental health needs of the Client.

- e. Group Therapy means a goal directed face-to-face therapeutic intervention with a group of no less than two (2), and for SUD no more than twelve (12), Clients receiving services at the same time. Such intervention shall be consistent with the Clients goals and focus primarily on symptom reduction as a means to improve functional impairments.
- 46. <u>Milestones of Recovery Scale (MORS)</u> refers to a Recovery scale that COUNTY uses in Adult and Older Adult Behavioral Health programs. The scale assigns Clients to their appropriate level of care and replaces diagnostic and acuity of illness-based tools.
- 47. <u>National Provider Identifier (NPI)</u> means the standard unique health identifier that was adopted by the Secretary of HHS Services under HIPAA for health care providers. All HIPAA covered healthcare providers, individuals, and organizations must obtain an NPI for use to identify themselves in HIPAA standard transactions. The NPI is assigned for life.
- 48. <u>Network Provider</u> means mental health service providers credentialed and under contract with CONTRACTOR. Such providers may be individual practitioners, provider groups, or clinics.
- 49. <u>Notice of Adverse Benefit Determination (NOABD)</u>, as outlined in California Code of Regulations Title 9 Chapter 11 Section 1850.210 and Title 22, Section 50179 means to provide formal written notification via hand-delivery or mail to Medi-Cal Beneficiaries and faxed or mailed to ADMINISTRATOR when services are denied, modified, reduced, delayed, suspended or terminated as specified by State standards.
- 50. <u>Notice of Privacy Practices (NPP)</u> means a document that notifies Clients of uses and disclosures of their PHI. The NPP may be made by, or on behalf of, the health plan or health care provider as set forth in HIPAA.
- 51. <u>Outreach</u> means linking Clients to appropriate Mental Health Services within the community. Outreach activities will include educating the community about the services offered and requirements for participation in the various mental health programs within the community. Such activities will result in CONTRACTOR developing its own Referral sources for programs being offered within the community.
 - 52. Out-of-County means any California county other than Orange County or border community.
- 53. <u>Patients' Rights Advocacy</u> means the group responsible for providing outreach and educational materials to inform Clients about their rights and remedies in receiving mental health treatment; representing Client' interests in fair hearings, grievances and other legal proceedings related to the provision of services; and monitoring mental health programs for compliance with patients' rights legal standards as the designee of the Local Mental Health Director.
- 54. <u>Primary Source Verification</u> means procedures for the review and direct verification of credentialing information submitted by care providers, including, but not limited to, confirmation of references, appointments, and licensure.
- 55. <u>Medi-Cal Certified Peer Specialist</u> means an individual in a paid position who has been through the same or similar Recovery process as those being assisted to attain their Recovery goals in the CSU. A Peer Specialist is informed by personal experience.

- 56. <u>Program Director</u> means an individual who is responsible for all aspects of administration and clinical operations of the behavioral health program, including development and adherence to the annual budget. This individual also is responsible for the following: hiring, development and performance management of professional and support staff, and ensuring mental health treatment services are provided in concert with COUNTY and state rules and regulations.
- 57. Protected Health Information (PHI) means individually identifiable health information usually transmitted through electronic media. PHI can be maintained in any medium as defined in the regulations, or for an entity such as a health plan, transmitted or maintained in any other medium. It is created or received by a covered entity and is related to the past, present, or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present, or future payment for health care provided to an individual.
- 58. <u>Psychiatrist</u> means an individual who meets the minimum professional and licensure requirements set forth in Title 9, CCR, Section 623, and, preferably, has at least one (1) year of experience treating children and TAY.
- 59. Quality Improvement (QI) means the use of interdisciplinary teams to review performance measures to identify opportunities for improvement. The teams use participatory processes to analyze and confirm causes for poor performance, design interventions to address causes, implement interventions, and measure improvement. Successful improvements are then implemented wherever appropriate. Where interventions are unsuccessful, the team again addresses the causes and designs new interventions until improvements are achieved.
- 60. Quality Improvement Committee (QIC) means a committee that meets quarterly to review one percent (1%) of all "high-risk" Medi-Cal recipients in order to monitor and evaluate the quality and appropriateness of services provided. At a minimum, the committee is comprised of one (1) ADMINISTRATOR, one (1) clinician, and one (1) physician who are not involved in the clinical care of the cases.
- 61. <u>Referral</u> means effectively linking Clients to other services within the community and documenting follow-up provided within five (5) business days to assure that Clients have made contact with the referred service(s).
- 62. <u>Registered Nurse (RN)</u> means a licensed individual, pursuant to the provisions of Chapter 6 of the California Business and Professions Code, who can provide clinical services to the Clients served. The license must be current and in force, and has not been suspended or revoked.
- 63. <u>Residential Counselor</u> means an individual in a paid position who has a High School Diploma or General Educational Development Certificate (GED) and two (2) years' experience working in a paid position in the mental health field.
- 64. <u>Resource Recommendation</u> means the process of providing a Client with one or more suggested resources, without plans and/or an ability to follow up on Linkage status.

- 65. <u>Retrospective Review</u> means determination of the appropriateness or necessity of services after they have been delivered, generally through the review of the medical or treatment record.
- 66. <u>Self-Referral</u> means when a Client or family member directly contacts a service provider with the goal of receiving services for themselves or a family member, regardless of Linkage status.
- 67. <u>Seriously Emotionally Disturbed (SED)</u> means children or adolescent minors under the age of eighteen (18) years who have a behavioral health disorder, as identified in the most recent edition of the DSM and/or the ICD 10, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the child's age according to expected developmental norms. W&I 5600.3.
- 68. <u>Service Authorization</u> means the determination of appropriateness of services prior to the services being rendered, based upon medical or service necessity criteria. This includes the authorization of outpatient services authorized by CONTRACTOR.
- 69. <u>Serious Persistent Mental Impairment (SPMI)</u> means an adult with a behavioral health disorder that is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. W&I 5600.3.
- 70. <u>Supervisory Review</u> means ongoing clinical case reviews in accordance with procedures developed by ADMINISTRATOR, to determine the appropriateness of Diagnosis and treatment and to monitor compliance to the minimum ADMINISTRATOR and Medi-Cal charting standards. Supervisory review is conducted by the program/clinic director or designee.
- 71. <u>Soft Token</u> means the security device which allows an individual user to access COUNTY's computer-based IRIS.
- 72. <u>Structured Therapeutic Activities</u> means organized program activities that are designed to meet treatment goals and objectives for increased social responsibility, self-motivation, and integration into the larger community. Such activities would include participation in the social structure of the residential program. It includes the Client's progression, with increasing levels of responsibility and independence through job and other assignments culminating in employment seeking and employment-initiating activities in the community.
- 73. <u>Uniform Method of Determining Ability to Pay (UMDAP)</u> means the method used for determining an individual's annual liability for Mental Health Services received from the COUNTY mental health system and is set by the State of California. Every Client seen in any COUNTY or COUNTY-contracted program needs an UMDAP regardless of contract payment structure, whether the Contract is actual cost based or fee for service.
- 74. <u>Unit of Service (UOS)</u> means the measurement used to quantify services provided to a Client; these units can vary depending on type of service in the MHP or DMC_ODS plans. Each one (1) hour block that the Client receives crisis stabilization services shall be claimed. Partial blocks of time shall be

rounded up or down to the nearest one (1) hour increment except that services provided during the first hour shall always be rounded up.

- 75. Wellness Action & Recovery Plan (WRAP) means a self-help technique for monitoring and responding to symptoms to achieve the highest possible levels of wellness, stability, and quality of life.
- 76. <u>Utilization Management Program</u> means the infrastructure required to carry out the concurrent review services according to this Contract, including, but not limited to, policies and procedures, request staffing and information systems.
- 77. Warm Hand-off means the process to allow for in-person (or Telehealth/telephonic, if clinically appropriate) care coordination and behavioral health linkages. For transitions of care, the warm handoff is the first step in establishing a trusted relationship between the Client and the new care provider to ensure seamless service delivery and coordination.
- B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Common Terms and Definitions Paragraph of this Exhibit A to the Contract.

II. BUDGET

A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph of this Exhibit A to the Contract and the following budget, which is set forth for informational purposes only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

Crisis Stabilization Unit

	Period One	Period Two	Period Three	<u>TOTAL</u>
ADMINISTRATIVE				
COSTS				
Indirect Costs	<u>\$ 1,157,848</u>	<u>\$ 1,478,104</u>	<u>\$ 1,478,104</u>	<u>\$ 4,114,056</u>
TOTAL	\$ 1,157,848	\$ 1,478,104	\$ 1,478,104	\$ 4,114,056
ADMINISTRATIVE				
COSTS				
PROGRAM COSTS				
Salaries	\$3,502,827	\$ 4,471,694	\$ 4,471,694	\$ 12,446,215
Benefits	1,015,820	1,296,791	1,296,791	3,609,402
Services and Supplies	986,615	1,259,509	1,259,509	3,505,633
Subcontractor	2,213,723	2,826,029	2,826,029	7,865,781
TOTAL PROGRAM	\$7,718,985	\$ 9,854,023	\$ 9,854,023	27,427,031
COSTS				
TOTAL COST	\$ 8,876,833	\$11,332,127	\$11,332,127	\$31,541,087

\$4,438,416	\$5,666,063	\$5,666,063	\$15,770,542			
<u>\$4,438,417</u>	\$5,666,064	\$5,666,064	\$15,770,545			
\$8,876,833	\$11,332,127	\$11,332,127	\$31,541,087			
\$8,876,833	\$11,332,127	\$11,332,127	\$31,541,087			
Crisis Residential Program						
Period One	Period Two	Period Three	<u>TOTAL</u>			
\$ 390,181	\$ 498,104	\$ 498,104	\$ 1,386,389			
\$ 390,181	\$ 498,104	\$ 498,104	\$ 1,386,389			
\$ 1,132,247	\$ 1,445,422	\$ 1,445,422	\$ 4,023,091			
328,352	419,173	419,173	1,166,698			
1,030,884	1,316,022	1,316,022	3,662,928			
109,726	140,075	140,075	389,876			
\$ 2,601,209	\$ 3,320,692	\$ 3,320,692	\$ 9,242,593			
\$ 2,991,390	\$ 3,818,796	\$ 3,818,796	\$ 10,628,982			
\$ 1,000,000	\$ 1,527,518	\$ 1,527,518	\$ 4,055,036			
1,991,390	2,291,278	2,291,278	6,573,946			
\$ 2,991,390	\$ 3,818,796	\$3,818,796	\$ 10,628,982			
\$2,991,390	\$3,818,796	\$3,818,796	\$ 10,628,982			
	\$4,438,417 \$8,876,833 \$8,876,833 \$8,876,833 **rogram Period One \$ 390,181 \$ 390,181 \$ 1,132,247	\$4,438,417 \$5,666,064 \$8,876,833 \$11,332,127 \$8,876,833 \$11,332,127 **Sogram* Period One* Period Two \$ 390,181 \$ 498,104 \$ 390,181 \$ 498,104 \$ 1,132,247 \$ 1,445,422	\$4,438,417 \$5,666,064 \$5,666,064 \$8,876,833 \$11,332,127 \$11,332,127 \$8,876,833 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$11,332,127 \$1,498,104 \$1,132,247 \$1,445,422 \$1,445,422 \$1,445,422 \$1,445,422 \$1,316,022 \$1,316,022 \$1,316,022 \$109,726 \$1,030,884 \$1,316,022 \$1,316,022 \$109,726 \$140,075 \$2,601,209 \$3,320,692 \$3,320,692 \$2,991,390 \$3,818,796 \$3,818,796 \$1,000,000 \$1,527,518 \$1,527,518 \$1,991,390 \$2,291,278 \$2,291,278 \$2,991,390 \$3,818,796 \$3,818,796			

B. CONTRACTOR and ADMINISTRATOR mutually agree that the Amount Not to Exceed identified in Subparagraph II.A. of this Exhibit A to the Contract includes Indirect Costs not to exceed ten

fifteen (15%) of Direct Costs, and which may include operating income estimated at two percent (2%). Final settlement paid to CONTRACTOR shall include Indirect Costs and such Indirect Costs may include operating income.

- C. BUDGET/STAFFING MODIFICATIONS CONTRACTOR may request to shift funds between programs, or between budgeted line items within a program, for the purpose of meeting specific program needs or for providing continuity of care to its members, by utilizing a Budget/Staffing Modification Request form provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing Modification Request to ADMINISTRATOR for consideration, in advance, which will include a justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and the sustaining annual impact of the shift as may be applicable to the current contract period and/or future contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing Modification Request(s) may result in disallowance of those costs.
- D. FINANCIAL RECORDS CONTRACTOR shall prepare and maintain accurate and complete financial records of its cost and operating expenses. Such records will reflect the actual cost of the type of service for which payment is claimed. Any apportionment of or distribution of costs, including indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and will be made in accordance with GAAP, and Medicare regulations. The Client eligibility determination and fee charged to and collected from Clients, together with a record of all billings rendered and revenues received from any source, on behalf of Clients treated pursuant to the Contract, must be reflected in CONTRACTOR's financial records.
- E. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Budget Paragraph of this Exhibit A to the Contract.

III. PAYMENTS

- A. BASIS FOR PAYMENT: COUNTY shall pay CONTRACTOR monthly, in arrears, the provisional amount of \$1,262,566 per month for Period One, \$1,262,576 per month for Period Two and \$1,262,576 per month for Period Three. All payments are interim payments only and are subject to Final Settlement in accordance with the Cost Report Paragraph of the Contract for which CONTRACTOR shall be reimbursed for the actual cost of providing the services in this Exhibit A, which may include Indirect Administrative Costs, as identified in Paragraph II.A. of this Exhibit A to the Contract; provided, however, the total of such payments does not exceed COUNTY's Amount Not to Exceed as specified in the Referenced Contract Provisions of the Contract and, provided further, CONTRACTOR's costs are reimbursable pursuant to COUNTY, State and/or Federal regulations. ADMINISTRATOR may, at its discretion, pay supplemental invoices or make advance payments for any month during the term.
 - 1. In support of the monthly invoices, CONTRACTOR shall submit an Expenditure and

Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Contract. ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

- 2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the provisional amount payments exceed the actual cost of providing services, ADMINISTRATOR may reduce COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and the year-to-date actual cost incurred by CONTRACTOR.
- 3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the provisional amount payments are less than the actual cost of providing services, ADMINISTRATOR may authorize an increase in the provisional amount payment to CONTRACTOR by an amount not to exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and the year-to-date actual cost incurred by CONTRACTOR.
- B. CONTRACTOR's invoices shall be on a form approved or supplied by COUNTY and provide such information as is required by ADMINISTRATOR. Invoices are due the twentieth (20th) calendar day of each month. Invoices received after the due date may not be paid within the same month. Payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice form.
- C. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records and records of services provided.
- D. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the Contract.
- E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of the Contract, except as may otherwise be provided under the Contract, or specifically agreed upon in a subsequent contract.
- F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Payments Paragraph of this Exhibit A to the Contract.

IV. REPORTS

- A. CONTRACTOR is required to comply with all applicable reporting requirements, including the requirements set forth in Division 5 of the California Welfare Institutions Code and Division 1, Title 9 of the California Code of Regulations, as well as any reports required of LPS designated facilities in the County of Orange.
- B. CONTRACTOR shall enter demographic information of all Clients served, direct services information, and other appropriate data into COUNTY's data information system (IRIS), including the utilization of the BHS Access Logs and NOABD reporting as required for all programs.

- C. PROGRAMMATIC CONTRACTOR shall submit monthly programmatic reports to ADMINISTRATOR. These reports shall be in a format approved by ADMINISTRATOR and shall include, but not limited to, descriptions of any performance objectives, outcomes, and/or interim findings as directed by ADMINISTRATOR. CONTRACTOR shall be prepared to present and discuss the programmatic reports at the monthly meetings with ADMINISTRATOR, to include whether or not CONTRACTOR is progressing satisfactorily and if not, specify what steps are being taken to achieve satisfactory progress. Such reports shall be received by ADMINISTRATOR no later than the twentieth (20th) calendar day following the end of the month being reported.
- D. On a monthly basis, CONTRACTOR shall report the following information to ADMINISTRATOR for the CSU services:
 - 1. Number of admissions, both involuntary and voluntary;
 - 2. Referral source;
 - 3. Number of admissions by funding (Medi-Cal, Health Plan, unfunded, etc.);
 - 4. Average daily census;
 - 5. Average length of stay (LOS);
 - 6. Number of discharges and inpatient transfers;
 - 7. Type of residence upon discharge;
 - 8. Instances of Restraint and Seclusions/Initiated and Instances of Seclusions;
 - 9. Percentages of Clients seen for medication by MD/NP within an hour;
 - 10. Percentages Discharged to a lower level of care and higher level of care;
 - 11. Number of stays over twenty-four (24) hours and respective LOS for each;
 - 12. A mutually agreed upon measure of seclusion and restraint utilization;
- 13. Recidivism, defined as readmissions occurring up to 14 and 60 calendar days post-discharge; and
- 14. Data regarding recidivating Clients with unmet needs, defined as Clients with four or more admissions in a month.
 - 15. Summary of Satisfaction Survey Results
- E. ACCESS LOG CONTRACTOR shall enter all appropriate services into County BHS Access Log in IRIS.
- F. CONTRACTOR shall advise ADMINISTRATOR of any special incidents, conditions, or issue that materially or adversely affect the quality or accessibility of services provided by, or under contract with, COUNTY.
- G. CONTRACTOR shall document all adverse incidents affecting the physical and/or emotional welfare of the Clients seen, including, but not limited to, serious physical harm to self or others, serious destruction of property, developments, etc., and which may raise liability issues with COUNTY. CONTRACTOR shall notify COUNTY within twenty-four (24) hours of any such serious adverse incident in the form of a Special Incident Report (SIR). CONTRACTOR shall also notify Community

Care Licensing (CCL) within twenty-four (24) hours of any such serious adverse incidents.

- H. ADDITIONAL REPORTS Upon ADMINISTRATOR's request, CONTRACTOR shall make such additional reports as required by ADMINISTRATOR concerning CONTRACTOR's activities as they affect the services hereunder. ADMINISTRATOR shall be specific as to the nature of information requested and allow thirty (30) calendar days for CONTRACTOR to respond.
- I. CONTRACTOR shall inform ADMINISTRATOR of any problems in collecting data, pertinent facts or interim findings, staff changes, status of license(s) and/or certification(s), changes in population served, and reasons for any changes. Additionally, a statement that CONTRACTOR is or is not progressing satisfactorily in achieving all the terms of the Contract shall be included.
- J. CONTRACTOR shall, upon ADMINISTRATOR's request, revise and make changes to all reports as needed.
- K. CONTRACTOR shall report the following information to ADMINISTRATOR for the Crisis Residential services:
- 1. On a daily basis, CONTRACTOR will report the daily census to ADMINISTRATOR and ensure that ADMINISTRATOR has a current status of open beds at all times.
- 2. On a monthly basis or as requested by ADMINISTRATOR, CONTRACTOR shall report the following information to ADMINISTRATOR:
 - a. current schedule of groups and activities;
 - b. a description of chart compliance activities as well as the outcome of chart reviews;
 - c. number of admissions;
 - d. referral source upon admission;
 - e. type of funding upon admission;
 - f. average length of stay;
 - g. number of admissions by funding (Medi-Cal, unfunded, etc.);
 - h. average daily census;
 - i. number of discharges;
 - i. type of residence on discharge (independent, home with family, Sober Living, etc.);
- k. voluntary and involuntary hospitalizations that occur during Client's stay or within forty-eight (48) hours of discharge;
 - 1. readmissions within forty-eight (48) hours and within fourteen (14) days of discharge;
 - m. number of individual counseling sessions and duration of sessions per month;
- n. number of educational groups and the duration of each group type provided to Clients per month;
 - o. number of attendees to the groups per month; and
 - p. percentage of Clients attending groups.
- 3. On a quarterly basis, CONTRACTOR shall report the Performance Outcome Objectives as outlined in Subparagraph V.F. of this Exhibit A to the Contract.

- L. ADMINISTRATOR and CONTRACTOR may mutually agree, in advance and in writing, to adjust the items to be included in the monthly programmatic reports based on the needs of COUNTY, the Clients, and a commitment to quality services.
- M. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify this Reports paragraph in Exhibit A.

V. CRISIS STABILIZATION SERVICES

A. FACILITIES

1. CONTRACTOR shall maintain the capability to provide Crisis Stabilization Services to Clients aged thirteen (13) and above at the following facility, which meets the minimum requirements for Medi-Cal eligibility and Designation:

265 South Anita Drive Orange, CA 92868

- 2. CONTRACTOR shall provide Crisis Stabilization Services twenty-four (24) hours per day seven (7) days per week, 365 days per year.
- 3. CONTRACTOR shall continue service delivery as existing provider of service and there shall be no disruption in services.
- 4. The facility shall have access for persons presenting on a drive-up basis, walk-in, via police drop off and ambulance delivery.
- 5. The facility shall have a minimum of seventy-three hundred (7,300) square feet with the majority of the space dedicated to Clients served and their care. Treatment areas shall be in visible line of sight from the nursing area. Space shall be allocated for: rest; socialization/living room; dining; seclusion and restraint/quiet rooms for agitated persons; private intake/exam space; medication room; and sufficient workspace for staff and conference/meeting rooms. Space shall be designed for the Clients treated and treatment staff to comingle for the majority of the time and shall enable them to work together in an easily accessible fashion. There shall be space dedicated for their families and significant others/support network to receive collateral treatment and areas for family/significant others to participate in program, visit, and stay with the Client being treated as clinically indicated. Nursing stations will be open and easily accessible for staff and Clients to communicate.
- 6. The facility shall be used exclusively for the CSU and COUNTY shall have full access to the facility and to COUNTY's service providers at any time. CONTRACTOR is responsible for maintenance, repair, and capital improvements to the facility.
 - 7. The facility shall meet the standards of the applicable sections of:
- a. Sections 1840.338 and 1840.348 of California Code of Regulations (CCR) Title 9, for Crisis Stabilization Services:

b. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq., as implemented in 45 CFR 84.1 et seq.);

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- c. Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities, as they exist now or may be hereafter amended together with succeeding legislation;
- d. All SD/MC requirements as delineated in California Code of Regulations, Title 9, Chapter 11, Medi-Cal Specialty Mental Health Services; and
- e. All applicable requirements delineated in Division 5 of the California Welfare & Institutions Code and required by ADMINISTRATOR for LPS designated facilities.
- 8. CONTRACTOR shall be SD/MC certified prior to the effective date for commencing contracted services. To obtain COUNTY's certification of CONTRACTOR's site, CONTRACTOR shall be responsible for making any necessary changes to meet or maintain Medi-Cal site standards.
- 9. CONTRACTOR shall be LPS designated prior to the effective date for commencing contracted services for Clients involuntarily detained on Welfare and Institutions Code 5150 or 5585 holds.
- 10. The facility shall have a capacity to serve twenty-two (22) Clients at one time and twenty-four (24) Clients per day and will include adequate physical space to support the services identified within this Contract.
- 11. CONTRACTOR's administrative staff holiday schedule shall be consistent with COUNTY's holiday schedule unless otherwise approved in writing by ADMINISTRATOR.

B. CLIENTS TO BE SERVED:

- 1. Orange County Residents;
- 2. Experiencing a behavioral health emergency, may have a co-occurring disorder, at risk of hospitalization and cannot wait for a regularly scheduled appointment; and
 - 3. Individuals thirteen (13) years of age or more.

C. SERVICES TO BE PROVIDED

1. CONTRACTOR shall provide psychiatric crisis stabilization services to individuals in behavioral health crisis on a twenty-four (24) hours a day basis to provide a viable option to the default presentation to emergency departments. Crisis Stabilization Services shall be rendered to any individual presenting for services who is in a behavioral health crisis and cannot wait for their regularly scheduled appointment if it is medically safe to do so. Crisis Stabilization services shall include, but are not limited to: psychiatric assessment, physical screening, collateral history, therapy, crisis intervention, medication services, education, nursing assessment, peer specialist services, coordination of referrals to continuing care and emergency housing, post discharge planning and facilitation of transfer of Clients to inpatient treatment facilities when clinically appropriate and indicated. Services described herein are primarily

designed to provide timely and effective crisis intervention and stabilization for persons experiencing behavioral health emergencies. The goals also include: minimize distress for the Client/family resulting from lengthy waits in emergency departments, reduce the wait time for law enforcement presenting Clients for emergency behavioral health treatment; and treating the Client in the least restrictive, most dignified setting as appropriate in lieu of inpatient settings, utilizing alternative, less restrictive treatment options whenever possible and appropriate. Services shall be provided in compliance with Welfare & Institutions Code and consistent with all patients' rights regulations, upholding the dignity and respect of all Clients served and meeting the goals for such services. The services shall also be provided utilizing Trauma Informed and Recovery Model principles that are person-centered, strengths-based, individualized, focused on imparting hope and identifying strengths and resiliency in all persons served. Services shall be tailored to the unique strengths of each Client and will use shared decision-making to encourage the Client to manage their behavioral health treatment, set their own path toward recovery and fulfillment of their hopes and dreams. CONTRACTOR shall have an affiliation with an identified hospital that will be providing the facility with access to medical, laboratory and pharmaceutical support prior to initiating services.

- 2. CONTRACTOR shall perform clinical and psycho-diagnostic assessment using the most recent DSM and/or ICD10 to include clinical consideration of each fundamental need: physical, psychological, familial, educational, social, environmental and recreational. Additional examinations, tests and evaluations may be conducted as clinically indicated. Findings of the examinations and evaluations shall be documented in the client record and signed by CONTRACTOR's appropriate and responsible staff.
- 3. CONTRACTOR shall provide psychiatric evaluations by licensed psychiatrist or psychiatric nurse practitioner(s) who shall issue prescriptions and order medications as clinically indicated. Medication support services shall include a system of medication quality review provided by well-trained, experienced psychiatrists knowledgeable in the use of medication to improve functioning.
- 4. CONTRACTOR shall complete physical health assessments which shall be performed by a physician, doctor of osteopathy, a nurse practitioner or registered nurse. CONTRACTOR shall provide or arrange for laboratory tests as are necessary to adequately complete the assessment and to support continued psychiatric stabilization of the Client. Non-emergency medical intervention will be provided on-site by qualified and trained and appropriately licensed individuals.
- 5. CONTRACTOR shall engage both the Client and the Clients' family or other significant support persons whenever possible. Such collateral services may include providing therapy to parents/guardians, adult caregivers or significant others to help the Client in maintaining living arrangements in the community. CONTRACTOR shall refer such caregiver(s) to appropriate community supports, and/or educational services. CONTRACTOR shall document contact with family/support persons or document why such contact is not possible or not advisable.
 - 6. CONTRACTOR shall obtain valid consents from the Clients, parents or courts for treatment

as required.

- 7. CONTRACTOR shall provide a sufficient amount of treatment services at all times to accommodate the Clients served and their supports not able to participate during regular daytime hours.
- 8. CONTRACTOR shall provide individual sessions for intake, recovery planning, and discharge. Additional individual counseling sessions shall take place as clinically necessary.
- 9. CONTRACTOR shall use individual therapy, brief intensive services, motivational interviewing, and short-term group therapy modalities including psycho-educational, cognitive behavioral and self-soothing therapy techniques.
- 10. CONTRACTOR shall promote recovery via individual and/or group sessions. Topics may include, but not be limited to: building a wellness toolbox or resource list, trauma informed principles of self-care, healthy habits, symptom monitoring, triggers and early warning signs of symptoms/relapse, identifying a crisis plan, and WRAP, etc.
- 11. CONTRACTOR shall provide all medically necessary substance use disorder treatment services for Clients who are living with a co-occurring substance use disorder problem in addition to their behavioral health issues as appropriate and shall make appropriate referrals to the SUD system of care for needs that extend beyond those that co-occur during the course of the mental health crisis stabilization episode.
- 12. CONTRACTOR shall develop strategies to advance trauma-informed care and to accommodate the vulnerabilities of trauma survivors.
- 13. Services are to be provided in an environment which is compatible with and supportive of a recovery model. Services shall be delivered in the spirit of recovery and resiliency, tailored to the unique strengths of each Client. The focus will be on personal responsibility for symptom management and independence, which fosters empowerment, hope, and an expectation of recovery from behavioral health illness. Recovery oriented and trauma informed language and principles shall be evident and incorporated in CONTRACTOR's policies, program design and space, and practice.
- 14. CONTRACTOR shall sustain a culture that supports and employs Peer Specialists in providing supportive socialization for Clients that will assist in their recovery, self-sufficiency and in seeking meaningful life activities and relationships. Peers shall be encouraged to share their stories of recovery as much as possible to stimulate the milieu with the notion that recovery is possible and to destigmatize behavioral health issues, inspire, and provide guidance.
- 15. CONTRACTOR shall ensure that Clients leave the facility with a medication supply (seven (7) to fourteen (14) day supply) sufficient to bridge them to their aftercare appointment with a prescribing provider by establishing a contractual agreement with a licensed pharmacy to deliver and supply discharge medications as necessary.
- 16. CONTRACTOR shall ensure prescribers consider respective formularies as part of their prescribing practices and in accordance with the HCA Behavioral Health Services (BHS) practice

guidelines.

- 17. CONTRACTOR shall have light meals and snacks available. Food will be nutritious and balanced and consist of an array of different foods that consider the special dietary and ethnic and cultural needs/values of the Clients served.
- 18. CONTRACTOR shall provide linkage and consultation with both more restrictive levels of care and community-based services designed to avoid hospitalization.
- 19. CONTRACTOR shall develop a written discharge and aftercare plan, including written discharge instructions for each Client that shall be based on the assessment and diagnosis of that Client. The discharge/aftercare plan and discharge instructions shall include all required elements for designated facilities.
- 20. CONTRACTOR shall adhere to any/all LPS designated facility requirements including providing assessments for involuntary hospitalization when necessary. This service must be available twenty-four (24) hours per day, seven (7) days per week, 365 days per year.
- 21. CONTRACTOR shall make follow up calls to assist Clients in making successful linkage to on-going behavioral health services. Such calls shall be initiated within twenty-four (24) hours during business days and seventy-two (72) hours of discharge during weekend periods and shall be documented in the medical record as a Care Coordination Services as appropriate.
- 22. As a designated outpatient facility, the facility may evaluate and treat Clients for no longer than twenty-three (23) hours and fifty-nine (59) minutes. CONTRACTOR shall have a process in place for describing actions taken when a person seen at the CSU has an episode that exceeds the twenty-three (23) hours and fifty-nine (59) minute limitation for a CSU stay. At a minimum, CONTRACTOR shall notify COUNTY's Patient Rights Advocate of these instances. CONTRACTOR shall follow designated outpatient requirements as modified by the state for Crisis Stabilization.
- 23. CONTRACTOR is responsible to provide or arrange for the transport of Clients requiring an inpatient level of care. This may include establishing a system both emergency and non emergency transportation.

D. QUALITY IMPROVEMENT

- 1. CONTRACTOR shall participate in any clinical case review and implement any recommendations made by COUNTY to improve the care provided to the individuals seen.
- 2. CONTRACTOR shall conduct Supervisory Review in accordance with procedures developed by ADMINISTRATOR. CONTRACTOR shall ensure that all chart documentation complies with all federal, state, and local guidelines and standards.
- 3. CONTRACTOR shall ensure that all clinical documentation is completed promptly and is reflected in the individual's chart within twenty-four (24) hours after completion of each service.
- 4. CONTRACTOR shall agree to adopt and comply with the written ADMINISTRATOR Documentation Manual or its equivalent, and any State requirements, as provided by ADMINISTRATOR, which describes, but is not limited to, the requirements for Medi-Cal and ADMINISTRATOR charting

standards. CONTRACTOR shall have a utilization management process in place to internally monitor documentation and billing standards on a routine basis.

- 5. CONTRACTOR shall demonstrate the capability to maintain a medical records system, including the capability to utilize COUNTY's IRIS system, to enter appropriate data. CONTRACTOR shall regularly review one hundred percent (100%) of their charting for accuracy and clinical appropriateness, IRIS data input and billing systems to ensure compliance with COUNTY and state P&Ps and establish mechanisms to prevent inaccurate claim submissions and follow up on corrections in a timely manner. CONTRACTOR agrees to develop their own Electronic Health Record or agree to utilize COUNTY's IRIS system as their primary electronic record, eliminating the need for dual entry.
- 6. CONTRACTOR shall maintain on file, at the facility, minutes and records of all quality improvement meetings and processes. Such records and minutes also are subject to regular review by ADMINISTRATOR in the manner specified in the Quality Improvement Implementation Plan and ADMINISTRATOR's P&P.
- 7. CONTRACTOR shall allow ADMINISTRATOR to attend QIC and medication monitoring meetings and complete all Medication Monitoring reports required by COUNTY.
- 8. CONTRACTOR shall allow COUNTY to review the quantity and quality of services provided pursuant to this Contract. This review will be conducted at CONTRACTOR's facility(ties) and/or by remote review and will consist of a review of medical and other records of clients provided services pursuant to the Contract.
- 9. At all times during the term of this Contact, CONTRACTOR shall maintain a compliance program in accordance with COUNTY .
- 10. CONTRACTOR shall attend meetings as requested by COUNTY including, but not limited to, the following:
- a. Case conferences, as requested by ADMINISTRATOR, to address any aspect of clinical care and implement any recommendations made by COUNTY to improve individual care.
- b. Monthly COUNTY management meetings with ADMINISTRATOR to discuss contractual and other issues related to, but not limited to, whether it is or is not progressing satisfactorily in achieving all the terms of the Contract, and if not, what steps will be taken to achieve satisfactory progress, compliance with P&Ps, review of statistics and clinical services.
 - c. Any trainings that COUNTY recommends or deems necessary.
- d. Any presentations/in-services as requested by COUNTY to educate other COUNTY and COUNTY-contracted providers regarding the aforementioned services and pertaining to new providers/systems of care so that CONTRACTOR is educated, apprised, up to date, knowledgeable and part of the larger COUNTY system of care.
- e. Clinical staff and IRIS staff training for individuals conducted by CONTRACTOR and/or ADMINISTRATOR.
 - 11. CONTRACTOR will follow the following guidelines for COUNTY tokens:

- a. CONTRACTOR recognizes access Soft Tokens are granted to specific staff members with a unique password. Passwords are not to be shared with anyone.
- b. CONTRACTOR shall maintain an inventory of staff members granted access to Soft Tokens.
- c. CONTRACTOR shall indicate in the monthly staffing report, the serial number of the Token for each staff member assigned a Token.
- d. CONTRACTOR shall notify ADMINISTRATOR when changes have occurred under the following conditions:
 - 1) Each staff member who no longer supports this Contract;
 - 2) Each staff member who no longer requires access to the HCA IRIS;
 - 3) Each staff member who leaves employment of CONTRACTOR;
 - 4) If Soft Token is malfunctioning; or
 - 5) Termination of Contract.
- e. CONTRACTOR shall input all IRIS data following COUNTY procedure and practice. All statistical data used to monitor CONTRACTOR shall be compiled using only IRIS reports, if available, and if applicable.
- 12. CONTRACTOR shall obtain a NPI The standard unique health identifier adopted by the Secretary of HHS under HIPAA of 1996 for health care providers.
- a. All HIPAA covered healthcare providers, individuals and organizations must obtain a NPI for use to identify themselves in HIPAA standard transactions.
- b. CONTRACTOR, including each employee that provides services under the Contract, will obtain a NPI upon commencement of the Contract or prior to providing services under the Contract. CONTRACTOR shall report to ADMINISTRATOR, on a form approved or supplied by ADMINISTRATOR, all NPI as soon as they are available.
- 13. CONTRACTOR shall provide the NPP for COUNTY, as the MHP, at the time of the first service provided under the Contract to individuals who are covered by Medi-Cal and have not previously received services at a COUNTY operated clinic. CONTRACTOR shall also provide, upon request, the NPP for COUNTY, as the MHP, to any individual who received services under the Contract.
- 14. CONTRACTOR shall not engage in, or permit any of its employees or subcontractors, to conduct research activity on individuals seen in COUNTY services without obtaining prior written authorization from ADMINISTRATOR.
- 15. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources, with respect to any individual(s) who have been referred to CONTRACTOR by COUNTY under the terms of the Contract. Further, CONTRACTOR agrees that the funds provided hereunder will not be used to promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian institution, or religious belief.
 - 16. CONTRACTOR shall maintain all requested and required written policies, and provide to

ADMINISTRATOR for review, input, and approval prior to staff training on said policies. All P&Ps and program guidelines will be reviewed bi-annually at a minimum for updates. Policies will include, but not limited to, the following:

- a. Admission Criteria and Admission Procedure;
- b. Assessments;
- c. Individual and Group Counseling Sessions;
- d. Crisis Intervention/Evaluation for Involuntary Holds;
- e. Treatment of Non-Compliant Individuals/Unplanned Discharges;
- f. Medication Management and Medication Monitoring;
- g. Recovery Program Policies and Practices;
- h. Community Integration/Case Management/Discharge Planning;
- i. Documentation Standards;
- j. Quality Management/Performance Outcomes;
- k. Individual Rights;
- 1. Personnel/In service Training;
- m. Ensuring Proper Staffing;
- n. Unusual Occurrence Reporting;
- o. Code of Conduct/Compliance;
- p. Mandated Reporting;
- q. Seclusion and Restraints;
- r. De-escalation Techniques, including use of voluntary and/or emergency medications;
- s. Meals and Snack Services;
- t. Transportation Services;
- u. Peer Support Services;
- v. Chart Review Protocol; and
- w. Any/all required LPS Designation Protocols.
- 17. CONTRACTOR shall provide initial and on-going training and staff development that includes, but is not limited to, the following:
 - a. Orientation to the programs' goals and P&Ps;
 - b. Training on subjects as required by state regulations;
 - c. Orientation to the services in this Paragraph V. of this Exhibit A to the Contract;
 - d. Recovery philosophy, Trauma Informed Care and individual empowerment;
 - e. Crisis intervention and de-escalation;
 - f. Substance use disorder and dependence;
 - g. Motivational interviewing;
 - h. Seclusion and Restraints;

- i. Crisis Prevention and Crisis Intervention Training;
- j. Documentation Training;
- k. Assessment and Diagnosis;
- 1. LPS Involuntary Detention Policies; and
- m. Community and Ancillary Resources.
- E. PROGRAM DIRECTOR The Program Director will have ultimate responsibility for the program (s) and will ensure the following:
- 1. CONTRACTOR shall maintain adequate records on each individual seen in services, which shall include all required forms and evaluations, on-going progress notes, and records of service provided by various personnel in sufficient detail to permit an evaluation of services;
- 2. CONTRACTOR shall designate a qualified reviewer of records. This reviewer shall complete one hundred percent (100%) review of individual charts regarding clinical documentation, ensuring all charts are in compliance with medical necessity and Medi-Cal/Medicare chart compliance. CONTRACTOR shall ensure that all chart documentation complies with all federal, state and local guidelines and standards. CONTRACTOR shall ensure that all chart documentation is completed within the appropriate timelines.
 - 3. Provide clinical direction and training to staff on all clinical documentation;
 - 4. Oversee all aspects of the clinical services of the Crisis Stabilization program (s);
- 5. Coordinate with clinicians, psychiatrists and/or nurses regarding individual treatment issues, professional consultations, or medication evaluations; and
- 6. Facilitate on-going program development and provide or ensure appropriate and timely supervision and guidance to staff regarding difficult cases and mental health emergencies.

F. PERFORMANCE OUTCOMES

- 1. CONTRACTOR shall be required to achieve, track and report Performance Outcome Objectives, on a quarterly basis as outlined below:
 - a. Sustain an average daily census of twenty four (24) unduplicated individuals per day;
- b. At least sixty percent (60%) of Clients admitted shall be successfully stabilized and returned to the community;
- c. At least seventy-five percent (75%) of Clients returned to the community shall successfully link (keep appointment) to on-going behavioral health services within fourteen (14) calendar days of discharge;
- d. Provide timely evaluations as measured by completing ninety-five percent (95%) of CSU admissions within one (1) hour of Clients arrival on a monthly basis; and
- e. CONTRACTOR shall work towards the ability to track the rate of readmission to any CSU within two days of CONTRACTOR discharge and will remain below two percent (2%) of all admissions.
 - f. CONTRACTOR and COUNTY shall work towards the ability to track the rate of mobile

Crisis Assessment Team (CAT) response within two days of discharge will remain below five percent (5%) of all admissions.

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- g. CONTRACTOR shall participate in a shared bed board with other COUNTY and COUNTY-contracted CSUs to ensure flow of clients through services and to avoid duplication of efforts regarding referrals.
- h. CONTRACTOR shall allow COUNTY access to daily census at any time and shall allow access to all client records.
- G. DATA: On a monthly basis, CONTRACTOR shall report the following information to ADMINISTRATOR:
 - 1. Number of admissions, both involuntary vs voluntary;
 - 2. Referral source;
 - 3. Number of admissions by funding (Medi-Cal, Health Plan, unfunded, etc.);
 - 4. Average daily census;
 - 5. Average length of stay (LOS);
 - 6. Number of discharges and inpatient transfers;
 - 7. Type of residence upon discharge;
 - 8. Summary of Satisfaction Survey Results;
 - 9. Instances of Restraint and Seclusions/Initiated and Instances of Seclusions;
 - 10. Percentages of Clients seen for medication by MD/NP within an hour;
 - 11. Percentages Discharged to a lower level of care and higher level of care;
 - 12. Number of stays over twenty-four (24) hours and respective LOS for each; and
- 13. Data regarding recidivating Clients with unmet needs, defined as Clients with four or more admissions in a month.
- H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Crisis Stabilization Services Paragraph of this Exhibit A to the Contract.

VI. CRISIS RESIDENTIAL SERVICES

A. FACILITIES

- 1. CONTRACTOR shall maintain a facility(ies) for the provision of Adult Crisis Residential Services. The facility(ies) shall include space to support the services identified within the Contract.
 - 2. CONTRACTOR shall meet the standards of the applicable sections of:
 - a. HSC Code 1520 et.seq;
- b. CCR, Title 22. Division 6, Chapter 2, Social Rehabilitation Facilities; Subchapter 1, Article 7;
 - c. CCR, Title 9, Division 1, Chapter 3, Article 3.5 Standards for the Certification of Social

Rehabilitation Programs;

- d. WIC Division 5, Part 2, Chapter 2.5, Article 1, section 5670.5;
- e. Section 504 of the Rehabilitation Act of 1973 -- (29 U.S.C. 794 et seq., as implemented in 45 CFR 84.1 et seq.);
- f. Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities, as they exist now or may be hereafter amended together with succeeding legislation.
- 3. The facility shall have a capacity of fifteen (15) beds and include adequate physical space to support the services identified within the Contract.
- 4. The facility shall be open for regular admissions between the hours of 8:00 a.m. and 8:00 p.m. Monday through Sunday and will also maintain the ability to accept an admission outside of these hours as requested. Services to Clients in this program will be provided on a twenty-four (24) hour, seven (7) day per week, three hundred sixty-five (365) day per year basis.
- 5. CONTRACTOR's holiday schedule shall be consistent with COUNTY's holiday schedule unless otherwise approved, in advance and in writing, by ADMINISTRATOR.
- B. INDIVIDUALS TO BE SERVED CONTRACTOR shall provide short-term crisis residential services to individuals evaluated by and referred by COUNTY, COUNTY contractors, and other referring providers as appropriate. CONTRACTOR will serve as the principal source to authorize admissions of individuals who meet the following criteria:
- 1. Adults 18 (eighteen) years and older whose needs are compatible with those of other Clients if they require the same level of care and supervision and all Community Care Licensing requirements can be met:
 - 2. COUNTY Client;
 - 3. Diagnosed with a behavioral health disorder and who may have a co-occurring disorder;
 - 4. In crisis and at the risk of hospitalization and could safely benefit from this level of care; and
 - 5. Willing to participate fully and voluntarily in services.
- C. ADULT CRISIS RESIDENTIAL PROGRAM This program operates twenty-four (24) hours a day, seven (7) days a week, emulates a home-like environment and supports a social rehabilitation model, which is designed to increase client's self sufficiency and enhance individuals' social connections with family or community so that they can move back into the community and prevent inpatient stays. Short-term crisis residential services will be provided to adults who are in behavioral health crises and may be at risk of psychiatric hospitalization and will involve families and significant others throughout the treatment episodes so that the dynamics of the Clients' circumstances are improved prior to discharge. For individuals who are referred from Adult and Older Adult Behavioral Health Services County or County-contracted behavioral health providers, CONTRACTOR shall collaborate with the existing providers to arrange for discharge planning, appropriate housing placements, in addition to securing linkages to ongoing treatment providers prior to discharge. Crisis residential services provide beneficial,

temporary alternatives for people experiencing acute psychiatric episodes or intense emotional distress who might otherwise face voluntary or involuntary inpatient treatment. CONTRACTOR shall provide crisis intervention, therapy, medication monitoring and evaluation to determine the need for the type and intensity of additional services within a framework of evidence based and trauma-informed approaches to recovery planning, including a rich peer support component. Services shall include treatment for cooccurring disorders based on either harm-reduction or abstinence-based approaches, if clinically appropriate, to wellness and recovery, including providing a safe, smoke free, drug free, accepting environment that nurtures Clients' processes of personal growth and overall wellness. CONTRACTOR must emphasize mastery of daily living skills and social development using strengthbased approaches that support recovery and wellness. The residential settings will create solid links to the continuum of care with heavy emphasis on housing supports and linkages that will ease the transitions into independent living and prevent recidivism. Intensive psychosocial services are provided on an individual and group basis by licensed and licensed-waivered mental health professionals, including therapy, crisis intervention, group education, assistance with self-administration of medications, focusing on teaching clients how to become independent and self sufficient in remembering when to request their medications and case management. The focus is on recovery and intensive behavioral health treatment, management and discharge planning, linkage and reintegration into the community. The average length of stay per Client is twenty one (21) calendar days. The program will offer an environment where Clients are supported as they look at their own life experiences, set their own paths toward recovery, and work towards the fulfillment of their hopes and dreams. The Clients are expected to participate fully in all program activities, including all individual sessions, groups and recovery oriented outings.

- 1. CONTRACTOR shall operate the program in such a manner that meets or exceeds the following regulations:
 - a. HSC 1520 et.seq;
 - b. CCR, Title 22, Division 6, Chapter 2 Social Rehabilitation Facilities;
- c. CCR, Title 9, Division 1, Chapter 3, Article 3.5 Standards for the Certification of Social Rehabilitation Programs, Section 531-535; and
 - d. WIC Division 5, Part 2, Chapter 2.5, Article 1, section 5670, 5670.5 and 5671.
 - 2. CONTRACTOR shall provide short term crisis residential program services as follows:
 - a. Admission Services:
- 1) CONTRACTOR shall admit individuals who have been determined to meet admission criteria and will have the Client sign an admission agreement describing the services to be provided, Client rights, and the expectations of the Client regarding house rules and involvement in all aspects of the program, including individual and group therapy sessions.
- 2) CONTRACTOR shall complete a thorough behavioral health assessment and psychiatric evaluation within twelve (12) hours of admission.
 - 3) During the initial seventy-two (72) hours subsequent to admission, Clients will be

expected to remain on site at all times to ensure integration into the program. After this initial period, Client may be eligible for a day pass to an approved activity, usually an MD appointment or an appointment for housing, etc. Prior to the approved activity pass, the Client must be clinically evaluated an hour prior to departure and immediately upon returning to the facility. These clinical evaluations will be clearly documented in the Client's chart.

- 4) CONTRACTOR shall obtain or complete a medical history within twenty-four (24) hours of admission.
- 5) CONTRACTOR shall be responsible for Client's TB testing upon admission if Client has not completed the test prior to admission to the program.
- 6) CONTRACTOR shall not deny referrals for Clients that meet medical necessity if CONTRACTOR has available space and appropriate staffing.
- 7) CONTRACTOR and Client will together develop a written plan of care specifying goals and objectives, involving Client's family and support persons as appropriate, and as aligned with a recovery focused, person-centered and directed approach within seventy-two (72) hours of admission. CONTRACTOR shall involve the Client's family and support persons, or document attempts to obtain agreement until agreement is obtained or the Client is discharged.
- 8) Within seventy-two (72) hours of admission, CONTRACTOR shall establish a discharge date in collaboration with the Client and their family/support system. The targeted discharge date will be within twenty-one (21) calendar days after admission.

b. Therapeutic Services:

- 1) CONTRACTOR shall provide structured day and evening services seven (7) calendar days a week which will include individual, group therapy, and community meetings amongst the Clients and crisis residential staff.
- 2) CONTRACTOR shall provide group counseling sessions at least four (4) times daily to assist Clients in developing skills that enable them to progress towards self-sufficiency and to reside in less intensive levels of care. Topics may include, but not be limited to: self-advocacy, personal identity, goal setting, developing hope, coping alternatives, processing feelings, conflict resolution, relationship management, proper nutrition, personal hygiene and grooming, household management, personal safety, symptom monitoring, etc. These groups will be clearly documented in the individual's chart. All therapeutic process groups will be facilitated by a licensed clinician or clinically supervised registered/waivered clinicians.
- 3) CONTRACTOR shall provide individual therapeutic sessions provided by a MD/DO/NP, licensed clinician, or clinically supervised registered/waivered staff at least one time a day to each Client and these sessions will be clearly documented in the chart.
- 4) CONTRACTOR shall support a culture of "recovery" which focuses on personal responsibility for a Client's behavioral health management and independence, and fosters Client empowerment, hope, and an expectation of recovery from mental illness. Activities and chores shall be

encouraged and assigned to each Client on a daily basis to foster responsibility and learning of independent living skills. These chores will be followed up on by residential staff, in the spirit of learning, who will also assist the Client in learning the new skills and completing the chores as needed.

- 5) CONTRACTOR's program will be designed to enhance Client motivation to actively participate in the program, provide Clients with intensive assistance in accessing community resources, and assist Clients developing strategies to maintain independent living in the community and improve their overall quality of life. Therapeutic outings (to local museums, art galleries, nature centers, parks, coffee shops) will be provided for all Clients in support of these goals.
- 6) CONTRACTOR shall assist the Client in developing and working on a WRAP throughout their stay at the program and will promote Client recovery on a daily basis via individual and/or group sessions. This will assist Clients in monitoring and responding to their symptoms in order to achieve the highest possible level of wellness, stability and quality of life. Topics may include but not be limited to: building a wellness toolbox or resource list, symptom monitoring, triggers and early warning signs of symptoms, identifying a crisis plan, etc.
- 7) CONTRACTOR shall engage both the Client and family/support persons in the program whenever possible. CONTRACTOR shall document contact with family/support persons or document why such contact is not possible or not advisable.
- 8) CONTRACTOR shall support a Co Existing Integrated Treatment Model that is non-confrontational, follows behavioral principles, considers interactions between behavioral health disorders and substance abuse and has gradual expectations of abstinence. CONTRACTOR shall provide, on a regularly scheduled basis, education via individual and/or group sessions to Clients on the effects of alcohol and other drug abuse, triggers, relapse prevention, and community recovery resources. Twelve (12) step groups and Smart Recovery groups will be encouraged at the facility on a regular basis.
- 9) CONTRACTOR shall support a culture that supports a smoke free environment in the facility and on the campus. CONTRACTOR shall provide educational groups regarding tobacco cessation and provide viable alternatives such as tobacco patches and other approved methods that support tobacco use reduction and cessation.
- 10) CONTRACTOR shall assist Clients in developing prevocational and vocational plans to achieve gainful employment and/or perform volunteer work if identified as a goal in the service plan.
- 11) CONTRACTOR shall provide crisis intervention and crisis management services designed to enable the Client to cope with the crisis at hand while maintaining his/her functioning status within the community and to prevent further decompensation or hospitalization.
- 12) CONTRACTOR shall provide assessments for involuntary hospitalization when necessary. This service must be available twenty-four (24) hours per day, seven (7) days per week.
- 13) CONTRACTOR will provide information, support, advocacy education, and assistance with including the Client's natural support system in treatment and services.

- 14) CONTRACTOR shall sustain a culture that supports Certified Peer Specialists in providing supportive socialization for Clients that will assist Clients in their recovery, self-sufficiency and in seeking meaningful life activities and relationships. Peers shall be encouraged to share their stories of recovery as much as possible to infuse the milieu with the notion that recovery is possible.
- 15) CONTRACTOR shall provide close supervision and be aware of Clients' whereabouts at all times to ensure the safety of all Clients. Every clinician and Residential Counselor will have an assigned caseload and be responsible for the monitoring of the assigned Clients. CONTRACTOR shall provide routine room checks in the evening and document observations. Rounds are completed by staff on regular intervals.
- 16) CONTRACTOR will actively explore, research and present ideas for additional evidence-based practices in order to continually improve and refine aspects of the program.

c. Case Management/Discharge Services:

- 1) CONTRACTOR shall actively engage in discharge planning from the day of admission, instructing and assisting Clients with successful linkage to community resources such as outpatient mental health clinics, substance abuse treatment programs, housing, including providing supportive assistance to the Client in identifying and securing adequate and appropriate follow up living arrangements, physical health care, and government entitlement programs.
- 2) CONTRACTOR shall collaborate proactively with Client's Mental Health Plan Provider when such is required to link Clients to COUNTY or contracted housing services which may include continued temporary housing, permanent supported housing, interim placement, or other community housing options.
- 3) CONTRACTOR shall assist Clients in scheduling timely follow-up appointment(s) between Client and their mental health service provider while still a Client or within twenty-four (24) hours following discharge to ensure that appropriate linkage has been successful and if not, relinkage services will be provided. Provide telephone follow up within five (5) days to ensure linkage was successful. Services shall be documented in the Client record. Peer Specialists and Residential Counselors will be expected to accompany Clients to their follow up linkage appointments as part of their case management duties.
- 4) CONTRACTOR shall coordinate treatment with physical health providers as appropriate and assist Clients with accessing medical and dental services and providing transportation and accompaniment to those services as needed.
- 5) CONTRACTOR shall develop a plan to provide a van/car for each admission as needed accompanied by a Residential Counselor so that a warm hand-off can occur when a Client is in need of transport to the facility. This will also ensure that the engagement and welcoming process commences immediately when a referral is received. Transportation out of the program will also be required to be provided by CONTRACTOR.
 - 6) CONTRACTOR shall obtain concurrent review from ADMINISTRATOR for

Clients who are deemed necessary to stay in the program for more than twenty-one (21) calendar days. CONTRACTOR will abide by County Policies from ADMINISTRATOR for Clients who are deemed necessary to stay in the program for more than twenty-one (21) calendar days.

- 7) Unplanned discharges will be avoided at all costs and only after all other interventions have failed. If, at any time, a Client presents as a serious danger to themselves or others, CONTRACTOR shall assess the safety needs of all concerned and may have the Client assessed for voluntary or involuntary hospitalization utilizing ADMINISTRATOR protocols. If a Client is seriously or repetitively non-compliant with the program, CONTRACTOR may discharge the Client if deemed necessary and only following a multi-disciplinary case conference which will include ADMINISTRATOR. CONTRACTOR shall be in compliance with eviction procedures following the CCR, Title 22, Section 81068.5, and Title 9, Section 532.3, and will provide an unusual occurrence report to ADMINISTRATOR no later than the following business day.
- 8) In the event a Client leaves the program against clinical advice, CONTRACTOR shall hold Client's bed open for twenty-four (24) hours unless otherwise mutually agreed upon by ADMINISTRATOR and CONTRACTOR.
- 9) In the event a Client is transferred for crisis stabilization to the COUNTY CSU or to the Emergency Department (ED), CONTRACTOR shall provide a warm hand-off to the CSU or ED receiving staff member and hold a Client's bed open for twenty-four (24) hours unless otherwise mutually agreed upon by ADMINISTRATOR and CONTRACTOR.

d. <u>Medication Support Services</u>:

- 1) CONTRACTOR shall provide medications, as clinically appropriate, to all Clients regardless of funding.
- 2) CONTRACTOR shall educate Clients on the role of medication in their recovery plan, and how the Client can take an active role in their own recovery process. CONTRACTOR shall provide education to Clients on medication choices, risks, benefits, alternatives, side effects and how these can be managed. Client education will be provided on a regularly scheduled basis via individual and group sessions.
- 3) CONTRACTOR shall obtain signed medication consent forms for each psychotropic medication prescribed.
- 4) Medications will be dispensed by a physician's order by licensed and qualified staff in accordance with CCR, Title 9, Div. 1, Chapter 3, Article 3.5, Section 532.1, as well as CCL Requirements.
- 5) Licensed staff authorized to dispense medication will document the Client's response to their medication, as well as any side effects to that medication, in the Client's record.
- 6) CONTRACTOR shall insure all medications are securely locked in a designated storage area with access limited to only those personnel authorized to prescribe, dispense, or administer medication.

- 7) CONTRACTOR shall establish written policies and procedures that govern the receipt, storage and dispensing of medication in accordance with state regulations.
- 8) CONTRACTOR shall not utilize sample medications in the program without first establishing policies and procedures for the use of sample medications consistent with State regulatory requirements.
- 9) CONTRACTOR shall provide a medication follow-up visit by a psychiatrist at a frequency necessary to manage the acute symptoms to allow the Client to safely stay at the Crisis Residential Program and to prepare the Client to transition to outpatient level of care upon discharge. At a minimum, CONTRACTOR shall provide an initial psychiatric evaluation by a psychiatric prescribing provider within twelve (12) hours after admission and will have a psychiatric prescribing provider available as needed for medication follow-up as needed or at a minimum twice per week thereafter.
- 10) Upon discharge, CONTRACTOR shall make available a sufficient supply of current psychiatric medications to which the Client has responded, to meet the Client's needs until they can be seen in an outpatient clinic. This may be a combination of new prescriptions, the Client's specific medications remaining at the Crisis Residential Program, and/or additional sample medications with patient labels.
- 11) CONTRACTOR shall utilize the COUNTY PBM to supply medications for unfunded Clients.

e. <u>Transportation Services</u>:

1) CONTRACTOR shall provide transportation services for program related activities which may include, but not be limited to, transportation to appointments deemed necessary for medical or dental care or activities related to and in support of preparation for discharge and/or community integration. All other non-crucial appointments will be delayed until after the Client is discharged. CONTRACTOR staff will accompany Clients on these necessary appointments.

f. Food Services:

- 1) CONTRACTOR shall meet meal service and food supply requirements per Community Care Licensing regulations which shall include, but not be limited to:
- a) Meals shall be served in the dining room and tray service provided on emergency need only so as to encourage community food preparation, eating and clean-up activities.
- b) CONTRACTOR shall create opportunities for Clients to participate in the planning, preparation and clean-up of food preparation activities.
- c) Food Services will meet meal and food supply requirements, including an abundant supply of healthy and fresh food options, including fruits, vegetables and other items that promote healthy choices and wellness.
- D. PROGRAM DIRECTOR/QI RESPONSIBILITIES The Program Director will have ultimate responsibility for the program and will ensure the following:
 - 1. Maintenance of adequate records on each Client which shall include all required forms and

evaluations, a written treatment/rehabilitation plan specifying goals, objectives, and responsibilities, ongoing progress notes, and records of service provided by various personnel in sufficient detail to permit an evaluation of services.

- 2. There is a supervisory and administrative structure in place that will ensure high quality, consistent staff are providing high quality and consistent trauma informed services at all hours of operation, including the evenings and nocturnal shifts.
- 3. The Clinical Supervisor, the Program Administrator/Manager or designated Qualified Staff will complete one hundred percent (100%) review of Client charts regarding clinical documentation, ensuring all charts are in compliance with medical necessity and Medi-Cal and Medicare requirements. Charts will be reviewed within one day of admission to ensure that all initial charting requirements are met and at the time of discharge. CONTRACTOR shall ensure that all chart documentation complies with all federal, state and local guidelines and standards. CONTRACTOR shall ensure that all chart documentation is completed within the appropriate timelines.
- 4. Provide clinical direction and training to staff on all clinical documentation and treatment plans/problem lists;
- 5. Retain on staff, at all times, a qualified individual trained by ADMINISTRATOR's QMS division; ADMINISTRATOR is requesting that Clinical Supervisor and Program Administrator/Manager positions carry out these duties;
- 6. Oversee all aspects of the clinical services of the recovery program, know each Client by name and be familiar with details of each of the Clients' cases/situations that brought them to the program;
- 7. Coordinate with in-house clinicians, psychiatrist and/or nurse regarding Client treatment issues, professional consultations, or medication evaluations;
- 8. Review and approve all monthly/quarterly/annual logs submitted to ADMINISTRATOR, (e.g. medication monitoring and utilization review); and
- 9. Facilitate on-going program development and provide or ensure appropriate and timely supervision and guidance to staff regarding difficult cases and behavioral health emergencies.

E. QUALITY IMPROVEMENT

- 1. CONTRACTOR shall agree to adopt and comply with the written Quality Improvement Implementation Plan and procedures provided by ADMINISTRATOR which describe the requirements for quality improvement, supervisory review and medication monitoring.
- 2. CONTRACTOR shall agree to adopt and comply with the written ADMINISTRATOR Documentation Manual or its equivalent, and any State requirements, as provided by ADMINISTRATOR, which describes, but is not limited to, the requirements for Medi-Cal, Medicare and ADMINISTRATOR charting standards.
- 3. CONTRACTOR shall demonstrate the capability to maintain a medical records system, including the capability to utilize COUNTY's IRIS system to enter appropriate data. CONTRACTOR shall regularly review its charting, IRIS data input and billing systems to ensure compliance with

COUNTY and State P&Ps and establish mechanisms to prevent inaccurate claim submissions.

- 4. CONTRACTOR shall maintain on file, at the facility, minutes and records of all quality improvement meetings and processes. Such records and minutes will also be subject to regular review by ADMINISTRATOR in the manner specified in the Quality Improvement Implementation Plan and ADMINISTRATOR's P&P.
- 5. CONTRACTOR shall allow ADMINISTRATOR to attend QIC and medication monitoring meetings.
- 6. CONTRACTOR shall allow COUNTY to review the quantity and quality of services provided pursuant to this Contract quarterly or as needed. This review will be conducted at CONTRACTOR's facility and will consist of a review of medical and other records of Clients provided services pursuant to the Contract.
- F. CONTRACTOR shall attend meetings, trainings and presentations as requested by COUNTY including but not limited to:
- 1. Case conferences, as requested by ADMINISTRATOR to address any aspect of clinical care and implement any recommendations made by COUNTY to improve Client care.
- 2. Monthly COUNTY management meetings with ADMINISTRATOR to discuss contractual and other issues related to, but not limited to whether it is or is not progressing satisfactorily in achieving all the terms of the Contract, and if not, what steps will be taken to achieve satisfactory progress, compliance with P&Ps, review of statistics and clinical services;
 - 3. Any trainings that COUNTY recommends or deems necessary.
- 4. Any presentations/in-services as requested by COUNTY involving new providers/systems of care so that CONTRACTOR is educated, apprised, up to date, knowledgeable and part of the larger COUNTY system of care.
- 5. Clinical staff and IRIS staff training for individuals conducted by CONTRACTOR and/or ADMINISTRATOR.
 - 6. CONTRACTOR will follow the following guidelines for COUNTY tokens:
- a. CONTRACTOR recognizes Tokens are assigned to a specific individual staff member with a unique password. Tokens and passwords will not be shared with anyone.
- b. CONTRACTOR shall maintain an inventory of the Tokens, by serial number and the staff member to whom each is assigned.
- c. CONTRACTOR shall request that ADMINISTRATOR deactivate all Tokens under the following conditions:
 - 1) Token of each staff member who no longer supports this Contract;
 - 2) Token of each staff member who no longer requires access to COUNTY IRIS;
 - 3) Token of each staff member who leaves employment of CONTRACTOR;
 - 4) Token is malfunctioning; or
 - 5) Termination of Contract.

- d. CONTRACTOR shall input all IRIS data following COUNTY procedure and practice. All statistical data used to monitor CONTRACTOR shall be compiled using IRIS reports, if available, and if applicable.
- G. CONTRACTOR shall obtain a NPI The standard unique health identifier adopted by the Secretary of HHS under HIPAA of 1996 for health care providers.
- 1. All HIPAA covered healthcare providers, individuals and organizations must obtain a NPI for use to identify themselves in HIPAA standard transactions.
- 2. CONTRACTOR, including each employee that provides services under the Contract, will obtain a NPI upon commencement of the Contract or prior to providing services under the Contract. CONTRACTOR shall report to ADMINISTRATOR, on a form approved or supplied by ADMINISTRATOR, all NPI as soon as they are available.
- H. CONTRACTOR shall provide the NPP for COUNTY, as the MHP, at the time of the first service provided under the Contract to individuals who are covered by Medi-Cal and have not previously received services at a COUNTY operated clinic. CONTRACTOR shall also provide, upon request, the NPP for COUNTY, as the MHP, to any individual who received services under the Contract.
- I. CONTRACTOR shall not engage in, or permit any of its employees or subcontractors, to conduct research activity on Clients without obtaining prior written authorization from ADMINISTRATOR.
- J. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources, with respect to any individual(s) who have been referred to CONTRACTOR by COUNTY under the terms of the Contract. Further, CONTRACTOR agrees that the funds provided hereunder will not be used to promote, directly or indirectly, any religious creed or cult, denomination or sectarian institution, or religious belief.
- K. CONTRACTOR shall maintain all requested and required written policies, and provide to ADMINISTRATOR for review, input, and approval prior to staff training on said policies. All P&Ps and program guidelines will be reviewed bi-annually at a minimum for updates. Policies will include but not limited to the following:
 - 1. Admission Criteria and Admission Procedure;
 - 2. Assessments and Individual Service Plans;
 - 3. Crisis Intervention/Evaluation for Involuntary Holds;
 - 4. Handling Non-Compliant Clients/Unplanned Discharges;
 - 5. Medication Management and Medication Monitoring;
 - 6. Recovery Program/Rehabilitation Program;
 - 7. Community Integration/Case Management/Discharge Planning;
 - 8. Documentation Standards;
 - 9. Quality Management/Performance Outcomes;
 - 10. Client Rights;
 - 11. Personnel/In service Training;

- 12. Unusual Occurrence Reporting;
- 13. Code of Conduct/Compliance;
- 14. Mandated Reporting; and
- 15. Good Neighbor Policy.
- L. CONTRACTOR shall provide initial and on-going training and staff development that includes but is not limited to the following:
 - 1. Orientation to the program's goals and P&Ps;
 - 2. Training on subjects as required by state regulations;
- 3. Orientation to the services sections outlined in this Section VI. of this Exhibit A to the Contract;
 - 4. Recovery philosophy and individual empowerment;
 - 5. Crisis intervention and de-escalation;
 - 6. Substance abuse and dependence; and
 - 7. Motivational interviewing.

M. PERFORMANCE OUTCOMES

- 1. CONTRACTOR shall be required to achieve, track and report Performance Outcome Objectives, on a quarterly basis as outlined below:
- a. A minimum of seventy-five percent (75%) of Clients shall be discharged to a lower level of care.
- b. A minimum of seventy percent (70%) of Clients shall be linked to a continuing care provider.
- c. A minimum of ninety-five percent (95%) of Clients shall not be hospitalized within 48 hours of discharge.
- d. A minimum of seventy-five percent (75%) of Clients shall not be readmitted within fourteen (14) calendar days of discharge.
 - e. Average Length of Stay for all Clients shall be tracked and reported.
- N. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Crisis Residential Services Paragraph of this Exhibit A to the Contract.

VII. STAFFING

- A. CONTRACTOR shall provide adequate staffing to assure that the services outlined above are performed in an efficient manner.
 - B. Crisis Stabilization Services:
- 1. CONTRACTOR shall provide staffing in conformance with Title 9 regulations for Crisis Stabilization services; shall have as Head of Service a licensed mental health professional in conformance to one of the following staff categories: Psychiatrist, Licensed Psychologist, LCSW, LPCC, Licensed MFT or RN; and shall have one RN on-site at all times.

C. Crisis Residential Services:

- 1. CONTRACTOR shall ensure that all staff are trained and have a clear understanding of all Personnel Requirements as stated in CCR Title 22, standards for a Social Rehabilitation Facility as for a Short Term Crisis Residential Division 6, 81065 and that continuing education is provided. The continuing education may include such topics as the following:
 - a. Basic knowledge of mental disorders;
 - b. Counseling skills, including individual, group, vocational and job counseling skills;
 - c. Crisis management;
 - d. Development and updating of needs and services plan;
 - e. Discharge planning;
 - f. Medications, including possible side effects and signs of overmedicating;
 - g. Knowledge of community services and resources; and
- h. Principles of good nutrition, proper food preparation and storage, and menu planning. The licensee shall document the number of hours of continuing education completed each year by direct care staff.
- 2. Staffing levels and qualifications will meet the requirements as stated in CCR Title 22, Division 6, Chapters 1 and 2; Title 9, Division 1, Chapter 3, Article 3.5; as well as the WIC Division 5, Part 2, Chapter 2.5, Article 1; and the HSC Division 2, Chapter 3, Article 2, and/or other certification standards for a Social Rehabilitation Facility as well as for a Short Term Crisis Residential, as appropriate to the services being provided. A sufficient number of clinical staff will be licensed in order to meet all State requirements. COUNTY shall not reimburse CONTRACTOR for services provided by clinical staff who do not meet these requirements.
- 3. A limited number of clinical staff will be qualified and designated by COUNTY to perform evaluations pursuant to Section 5150, WIC.

4. WORKLOAD STANDARDS

- a. One (1) DSH will be equal to sixty (60) minutes of direct Client service.
- b. CONTRACTOR shall provide nine hundred fifty (950) DSHs per year of direct physician time which will include medication support services which are inclusive of both billable and non-billable services.
- c. CONTRACTOR shall ensure prescriber services are available a minimum of three (3) hours per day, seven (7) days a week and that each Client is seen at least twice per week or more often as needed.
- d. CONTRACTOR shall provide four thousand eight hundred (4,800) Client bed days per year, which are inclusive of both billable and non-billable services.
- e. CONTRACTOR shall, during the term of the Contract, provide Client related services, tracking the number of individual counseling sessions and number of therapeutic and educational didactic groups provided with a minimum of four (4) groups, including two therapeutic groups facilitated by

licensed clinicians or clinically supervised registered/waivered clinicians and two didactic groups facilitated by non-licensed staff, and one (1) individual session provided by a licensed clinician or clinically supervised registered/waivered clinicians per day.

D. Both Programs:

- 1. CONTRACTOR shall notify ADMINISTRATOR, in writing, within seventy-two (72) hours of any staffing vacancies that occur during the term of the Contract. CONTRACTOR's notification shall include at a minimum the following information: employee name(s), position title(s), date(s) of resignation, date(s) of hire, and a description of recruitment activity.
- 2. CONTRACTOR shall notify ADMINISTRATOR, in writing, at least seven (7) calendar days in advance, of any new staffing changes; including promotions, temporary FTE changes and internal or external temporary staffing assignment requests that occur during the term of the Contract.
- 3. CONTRACTOR shall include bilingual/bicultural services to meet the needs of threshold languages as determined by ADMINISTRATOR. Whenever possible, bilingual/bicultural staff should be retained. Any clinical vacancies occurring at a time when bilingual and bicultural composition of the clinical staffing does not meet the above requirement, the vacancies must be filled with bilingual and bicultural staff unless ADMINISTRATOR consents, in advance and in writing, to the filling of those positions with non-bilingual staff. Salary savings resulting from such vacant positions may not be used to cover costs other than salaries and employees benefits unless otherwise authorized, in advance and in writing, by ADMINISTRATOR.
- 4. CONTRACTOR shall maintain personnel files for each staff person, including management and other administrative positions, both direct and indirect to the Contract, which shall include, but not be limited to, an application for employment, qualifications for the position, applicable licenses, waivers, registrations, documentation of bicultural/bilingual capabilities (if applicable), pay rate and evaluations justifying pay increases.
- 5. CONTRACTOR shall make its best effort to provide services pursuant to the Contract in a manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR shall maintain documents of such efforts which may include; but not be limited to: records of participation in COUNTY-sponsored or other applicable training; recruitment and hiring P&Ps; copies of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to, Clients who are physically challenged.
- 6. CONTRACTOR shall recruit, hire, train, and maintain staff that are persons in recovery, and/or family members of persons in recovery. These individuals shall not be currently receiving services directly from CONTRACTOR. Documentation may include, but not be limited to, the following: records attesting to efforts made in recruitment, hiring practices and identification of measures taken to enhance accessibility for potential staff in these categories.
- 7. CONTRACTOR shall ensure that all staff, paid or unpaid, complete necessary training prior to discharging duties associated with their titles and any other training necessary to assist CONTRACTOR

and COUNTY to be in compliance with prevailing standards of practice as well as State and Federal regulatory requirements.

- 8. CONTRACTOR shall provide ongoing supervision throughout all shifts to all staff, paid or unpaid, direct line staff or supervisors/directors, to enhance service quality and program effectiveness. Supervision methods should include debriefings and consultations as needed, individual supervision or one-on-one support, and team meetings. Supervision should be provided by a supervisor who has extensive knowledge regarding behavioral health issues.
- 9. CONTRACTOR may augment the above paid staff with volunteers or interns upon written approval of ADMINISTRATOR. CONTRACTOR shall provide supervision to volunteers or intern as specified in their respective job descriptions or work contracts.
- a. Student intern services shall not comprise more than twenty percent (20%) of total services provided.
- 10. CONTRACTOR shall ensure that all staff, including interns and volunteers, are trained and have a clear understanding of all P&Ps. CONTRACTOR shall provide signature confirmation of the P&P training for each staff member and place in their personnel files.
- 11. CONTRACTOR shall provide detailed job descriptions, including education and experience requirements, all applicable responsibilities, assigned duties, and workflow for each delineated position.
- E. CONTRACTOR shall, at a minimum, provide the following staffing pattern expressed in Full-Time Equivalents (FTEs) continuously throughout the term of the Contract. One (1) FTE shall be equal to an average of forty (40) hours work per week.

Crisis Stabilization Unit Staffing

<u>Program</u>	<u>FTE</u>
Program Director	1.00
Program Support Assistant	1.00
Social Services Coordinator	4.20
Social Services Lead	0.73
Health Information Specialist	2.00
Private Insurance Coordinator	1.00
Registered Nurses (RN)	12.60
LVN/LPTs	10.50
Program Nurse Coverage	1.28
Mental Health Worker	25.20
Peer Advocate	1.40
Driver	1.00
MD/NP (Subcontractor)	3.80
Security (Subcontractor)	<u>8.40</u>

TOTAL FTEs	74.11
Crisis Residential Services Staffing	
Program Program	FTE
Program Director	1.00
Program Support Assistant	1.00
Social Services Coordinator	1.40
Social Services Lead	0.22
LVN/LPT	8.40
Mental Health Worker	8.40
Peer Advocate	1.40
MD/NP (Subcontractor)	0.26
Total FTEs	22.08

- F. CONTRACTOR shall provide effective Administrative management of the budget, staffing, recording, and reporting portion of the Contract with COUNTY. If administrative responsibilities are delegated to subcontractors, CONTRACTOR must ensure that any subcontractor(s) possess the qualifications and capacity to perform all delegated responsibilities. These responsibilities include, but not limited to, the following:
- 1. Designate the responsible position(s) in your organization for managing the funds allocated to this program;
 - 2. Maximize the use of the allocated funds;
 - 3. Ensure timely and accurate reporting of monthly expenditures;
 - 4. Maintain appropriate staffing levels;
 - 5. Request budget and/or staffing modifications to the Contract;
 - 6. Effectively communicate in a proactive manner and monitor the program for its success;
 - 7. Track and report expenditures electronically;
- 8. Maintain electronic and telephone communication between key staff and the Contract and Program Administrators; and
 - 9. Act quickly to identify, report and solve problems.
- G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing Paragraph of this Exhibit A to the Contract.

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EXHIBIT B

TO CONTRACT FOR PROVISION OF

CRISIS STABILIZATION SERVICES AND CRISIS RESIDENTIAL SERVICES

BETWEEN

COUNTY OF ORANGE

AND

EXODUS RECOVERY, INC.

SEPTEMBER 19, 2024 THROUGH JUNE 30, 2027

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

- 1. The parties agree that the terms used, but not otherwise defined in the Common Terms and Definitions Paragraph of Exhibit A to the Contract or in Subparagraph B below, shall have the same meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.
- 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of COUNTY pursuant to, and as set forth in, the Contract that are described in the definition of "Business Associate" in 45 CFR § 160.103.
- 3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the terms of the Contract, some of which may constitute PHI, as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract.
- 4. The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.
- 5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.
- 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the terms of this Business Associate Contract, as it exists now or be hereafter updated with notice to CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the

Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract.

B. DEFINITIONS

- 1. "Administrative Safeguards" are administrative actions, and P&Ps, to manage the selection, development, implementation, and maintenance of security measures to protect ePHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

a. Breach excludes:

- 1) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- 2) Any inadvertent disclosure by a person who is authorized to access PHI at CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health care arrangement in which COUNTY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.
- 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. Except as provided in Subparagraph a. of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
- 1) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - 2) The unauthorized person who used the PHI or to whom the disclosure was made;
 - 3) Whether the PHI was actually acquired or viewed; and
 - 4) The extent to which the risk to the PHI has been mitigated.
- 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
- 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
- 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
- 6. "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

- 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 8. "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 10. "PHI" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
- 11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.
 - 12. "Secretary" shall mean the Secretary of the Department of HHS or his or her designee.
- 13. "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of ePHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
- 16. "Technical safeguards" means the technology and the P&Ps for its use that protect electronic PHI and control access to it.
- 17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of HHS in the guidance issued on the HHS Web site.
- 18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to CONTRACTOR other than as permitted or required by this Business Associate Contract or as required by law.
- 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract, to prevent use or disclosure of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY other than as provided for by this Business Associate Contract.

- 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
- 4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Business Associate Contract.
- 5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which CONTRACTOR becomes aware. CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E below and as required by 45 CFR § 164.410.
- 6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply through this Business Associate Contract to CONTRACTOR with respect to such information.
- 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an EHR with PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR shall provide such information in an electronic format.
- 8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY in writing no later than ten (10) calendar days after said amendment is completed.
- 9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's compliance with the HIPAA Privacy Rule.
- 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, and to make information related to such Disclosures available as would be required for COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
- 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in a time and manner to be determined by COUNTY, that information collected in accordance with the Contract, in order to permit COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

- 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.
- 13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all employees, subcontractors, and agents who have access to the Social Security data, including employees, agents, subcontractors, and agents of its subcontractors.
- 14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a criminal proceeding for a violation of HIPAA. COUNTY may terminate the Contract, if CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may terminate the Contract, if a finding or stipulation that CONTRACTOR has violated any standard or requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined. COUNTY will consider the nature and seriousness of the violation in deciding whether or not to terminate the Contract.
- 15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting CONTRACTOR in the performance of its obligations under the Contract, available to COUNTY at no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against COUNTY, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its subcontractor, employee, or agent is a named adverse party.
- 16. The Parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY concerning an amendment to this Business Associate Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. COUNTY may terminate the Contract upon thirty (30) days written notice in the event:
- a. CONTRACTOR does not promptly enter into negotiations to amend this Business Associate Contract when requested by COUNTY pursuant to this Subparagraph C; or
- b. CONTRACTOR does not enter into an amendment providing assurances regarding the safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations.

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17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

- 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall develop and maintain a written information privacy and security program that includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities.
- 2. CONTRACTOR shall implement reasonable and appropriate P&Ps to comply with the standards, implementation specifications and other requirements of 45 CFR Part 164, Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its current and updated policies upon request.
- 3. CONTRACTOR shall ensure the continuous security of all computerized data systems containing ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:
- a. Complying with all of the data system security precautions listed under Subparagraph E., below:
- b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in conducting operations on behalf of COUNTY;
- c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the OMB in OMB Circular No. A-130, Appendix III Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies;
- 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained in this Subparagraph D of this Business Associate Contract.
- 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with Subparagraph E below and as required by 45 CFR § 164.410.
- 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this paragraph and for communicating on security matters with COUNTY.

E. DATA SECURITY REQUIREMENTS

1. Personal Controls

- a. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of COUNTY in connection with Contract, or access or disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, must complete information privacy and security training, at least annually, at CONTRACTOR's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following the termination of Contract.
- b. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with any provisions of CONTRACTOR's privacy P&Ps, including termination of employment where appropriate.
- c. Confidentiality Statement. All persons that will be working with PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to such PHI. The statement must be renewed annually. The CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection for a period of six (6) years following the termination of the Contract.
- d. Background Check. Before a member of the workforce may access PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. CONTRACTOR shall retain each workforce member's background check documentation for a period of three (3) years.

2. Technical Security Controls

- a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the COUNTY.
- b. Server Security. Servers containing unencrypted PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

- c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY required to perform necessary business functions may be copied, downloaded, or exported.
- d. Removable media devices. All electronic files that contain PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered "removed from the premises" if it is only being transported from one of CONTRACTOR's locations to another of CONTRACTOR's locations.
- e. Antivirus software. All workstations, laptops and other systems that process and/or store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. Patch Management. All workstations, laptops and other systems that process and/or store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of vendor release. Applications and systems that cannot be patched due to operational reasons must have compensatory controls implemented to minimize risk, where possible.
- g. User IDs and Password Controls. All users must be issued a unique user name for accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:
 - 1) Upper case letters (A-Z)
 - 2) Lower case letters (a-z)
 - 3) Arabic numerals (0-9)
 - 4) Non-alphanumeric characters (punctuation symbols)
- h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or US DoD 5220.22-M (7 Pass) standard, or by degaussing. Media may

also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission by COUNTY.

- i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
- j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after occurrence.
- l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.
- n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

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a. System Security Review. CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have at least an annual system risk assessment/security review which provides assurance

that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

- b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a routine procedure in place to review system logs for unauthorized access.
- c. Change Control. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.
 - 4. Business Continuity/Disaster Recovery Control
- a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY kept in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Contract for more than twenty-four (24) hours.
- b. Data Backup Plan. CONTRACTOR must have established documented procedures to backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data. BCP for CONTRACTOR and COUNTY (e.g. the application owner) must merge with the DRP.

5. Paper Document Controls

- a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Such PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.
- c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of through confidential means, such as cross cut shredding and pulverizing.

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- d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises of the CONTRACTOR except with express written permission of COUNTY.
- e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of COUNTY to use another method is obtained.

F. BREACH DISCOVERY AND NOTIFICATION

- 1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.
- a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
- b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.
- 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written notification within twenty-four (24) hours of the oral notification.
 - 3. CONTRACTOR's notification shall include, to the extent possible:
- a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- b. Any other information that COUNTY is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
- 1) A brief description of what happened, including the date of the Breach and the date of the Breach, if known;

- 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the COUNTY.
- 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
- 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
- 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to COUNTY pursuant to Subparagraph F.2. above.
- 8. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of five (5) business days after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to COUNTY, when such request is made by COUNTY.
- 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Contract, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

- a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, for the proper management and administration of CONTRACTOR.
- b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the proper management and administration of CONTRACTOR or to carry out the legal responsibilities of CONTRACTOR, if:
 - 1) The Disclosure is required by law; or
- 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
- c. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
- 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to carry out legal responsibilities of CONTRACTOR.
- 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR consistent with the minimum necessary P&Ps of COUNTY.
- 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as required by law.

H. PROHIBITED USES AND DISCLOSURES

- 1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).
- 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC § 17935(d)(2).

I. OBLIGATIONS OF COUNTY

- 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect CONTRACTOR's Use or Disclosure of PHI.
- 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR's Use or Disclosure of PHI.

- 3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect CONTRACTOR's Use or Disclosure of PHI.
- 4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

J. BUSINESS ASSOCIATE TERMINATION

- 1. Upon COUNTY's knowledge of a material Breach or violation by CONTRACTOR of the requirements of this Business Associate Contract, COUNTY shall:
- a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the violation within thirty (30) business days; or
- b. Immediately terminate the Contract, if CONTRACTOR is unwilling or unable to cure the material Breach or end the violation within thirty (30) days, provided termination of the Contract is feasible.
- 2. Upon termination of the Contract, CONTRACTOR shall either destroy or return to COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.
- a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of CONTRACTOR.
 - b. CONTRACTOR shall retain no copies of the PHI.
- c. In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains such PHI.
- 3. The obligations of this Business Associate Contract shall survive the termination of the Contract.

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EXHIBIT C

TO CONTRACT FOR PROVISION OF

CRISIS STABILIZATION SERVICES AND CRISIS RESIDENTIAL SERVICES

BETWEEN

COUNTY OF ORANGE

AND

EXODUS RECOVERY, INC.

SEPTEMBER 19, 2024 THROUGH JUNE 30, 2027

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

- 1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.
- 2. "Breach of the security of the system" shall have the meaning given to such term under the CIPA, CCC § 1798.29(d).
 - 3. "CMPPA Contract" means the CMPPA Contract between the SSA and CHHS.
- 4. "DHCS PI" shall mean PI, as defined below, accessed in a database maintained by the COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Contract on behalf of the COUNTY.
 - 5. "IEA" shall mean the IEA currently in effect between the SSA and DHCS.
- 6. "Notice-triggering PI" shall mean the PI identified in CCC § 1798.29(e) whose unauthorized access may trigger notification requirements under CCC § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.
 - 7. "PII" shall have the meaning given to such term in the IEA and CMPPA.
 - 8. "PI" shall have the meaning given to such term in CCC § 1798.3(a).
- 9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or //

- 200 -

regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Contract; or interference with system operations in an information system that processes, maintains or stores Pl.

B. TERMS OF CONTRACT

- 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the Contract provided that such use or disclosure would not violate the CIPA if done by the COUNTY.
- 2. Responsibilities of CONTRACTOR CONTRACTOR agrees:
- a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or required by this Personal Information Privacy and Security Contract or as required by applicable state and federal law.
- b. Safeguards. To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and Security Contract. CONTRACTOR shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities, which incorporate the requirements of Subparagraph c. below. CONTRACTOR will provide COUNTY with its current policies upon request.
- c. Security. CONTRACTOR shall ensure the continuous security of all computerized data systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing DHCS PI and PII. These steps shall include, at a minimum:
- 1) Complying with all of the data system security precautions listed in Subparagraph E. of the Business Associate Contract, Exhibit B to the Contract; and
- 2) Providing a level and scope of security that is at least comparable to the level and scope of security established by the OMB in OMB Circular No. A-130, Appendix III-Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.
- 3) If the data obtained by CONTRACTOR from COUNTY includes PII, CONTRACTOR shall also comply with the substantive privacy and security requirements in the CMPPA Contract between the SSA and the CHHS and in the Contract between the SSA and DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security requirements to be complied

with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that apply to CONTRACTOR with respect to such information.

- d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or its subcontractors in violation of this Personal Information Privacy and Security Contract.
- e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and conditions set forth in this Personal Information and Security Contract on any subcontractors or other agents with whom CONTRACTOR subcontracts any activities under the Contract that involve the disclosure of DHCS PI or PII to such subcontractors or other agents.
- f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or COUNTY for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including employees, contractors and agents of its subcontractors and agents.
- g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist the COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such Breach to the affected individual(s).
- h. Breaches and Security Incidents. During the term of the Contract, CONTRACTOR agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII or security incident. CONTRACTOR agrees to give notification of any Breach of unsecured DHCS PI and PII or security incident in accordance with Subparagraph F, of the Business Associate Contract, Exhibit B to the Contract.
- i. Designation of Individual Responsible for Security. CONTRACTOR shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Personal Information Privacy and Security Contract and for communicating on security matters with the COUNTY.

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Exhibit 4

Outcomes from Be Well Priorities Strategy Session

From Simmering, Lilly <LSimmering@ochca.com>

Date Fri 3/6/2020 5:47 PM

To Marshall Moncrief <marshall.moncrief@mind-oc.org>; 'Clayton Chau' <clayton.chau@mind-oc.org>; Lauren Brand <lauren.brand@bewelloc.org>; Annette Mugrditchian <amugrditchian@ochca.com>; Jeff Nagel <jnagel@ochca.com>; Sanchez, Richard <Richard.Sanchez@ochca.com>; Linda Molina <LMolina@ochca.com>

Good afternoon everyone,

I apologize it has taken me a full week to get the re-cap from last week's brainstorming session out to all of you. I do want you to have time to see it before our dinner meeting next week, so we can discuss it. This email will contain a lot, so be prepared. ©

All is open to refinement as I think this is what we will use to develop messaging from for describing our Be Well efforts.

Be Well Priorities (2019-2021)

	Anita Behavioral Hea		
Major Milestones	Milestone Tasks	Anticipated Completion Date	Assigned County and MindOC Team Members
Programming Design	Contracts Complete provider RFPs Secure licensing and certifications (DHCS) Scope of Work development Identify how to incorporate value-based contracting language. Policies Security (in and outside of facility) Referrals to facility – who can make referrals? Smoking policy Outstanding Programming	Negotiations completed by Fall 2020 Contract start dates will be 10/2020 with operational date set at 1/2021	County: Annette, Linda, Blanco, Vanessa, April MindOC: Lauren
	 Non-RFP Services- which services and who to include? 		
	Management of patient flow		
		Non-RFP Services -Initiate planning in Summer 2020	
Rate Setting	Payor agnostic model	• Summer 2020	County: Jeff Nagel
	Rent Funding/Cash Flow		MindOC: Marshall Moncrief
	Private Sector Involvement		
	Innovations Project – Value B	ased Contracting	1
Major Milestones	Milestone Tasks	Anticipated Completion Date	Assigned County and MindOC Team Members
VB Research/Meetings,		Summer 2020	County: Jeff, Sharon, Flor
Education, and Material			MindOC:
Development			
Capacity Building and		Fall 2020	County: Jeff, Sharon, Flor
Planning Meetings Identification of		Fall 2020	MindOC: County: Jeff, Sharon, Flor
Performance Standards		Fall 2020	MindOC:
and Braiding Strategies			windoe.
Development of Initial		December 2020	County: Jeff, Sharon, Flor
Contract Templates			MindOC:
Technical Assistance to Providers		FY 2021	County: Jeff, Sharon, Flor MindOC:
	Crisis Response Ne	twork	
Major Milestones	Milestone Tasks	Anticipated Completion Date	Assigned County and MindOC Team Members
CRN Assessment Report		Completed 1/2020	County: Annette, Linda MindOC: Lauren
CRN Model Design		3/2020	County: Richard, Jeff, Lilly, Annette, Linda MindOC: Marshall, Clayton, Lauren
CRN Stakeholder Group Meeting		TBD	County: Richard, Jeff, Lilly, Annette, Linda MindOC: Marshall, Clayton, Lauren
	Full Integratio		T
Major Milestones	Milestone Tasks	Anticipated Completion Date	Assigned County and MindOC Team Members
MindOC 3-Day Presentation on Value Based Contracting under Full Integration Model		TBD	County: MindOC: Clayton
County of Orange Full Integration Model		TBD; after 3-day presentations	County: Richard, Jeff, Lilly MindOC: Clayton

Development			
State Full Integration	Develop messaging around our model	TBD	County: Richard, Jeff, Lilly
Learning Collaborative			MindOC: Clayton

Be Well Priorities Timeline

Version: 3/6/2020

1. Anita Behavioral Health Campus **Targeted RFP Negotiations Completed Rate Setting Completed** March 2020 Janua Summer 2020 Fall 2020 Capacity Building & Planning Meetings 2. Innovations Project - Value Based Contracting **Initial Contract Templates** Completed; Performance Standards & VB Research/Meetings, Education, & Developed **Braiding Strategies Identified** Material Development Completed March 2020 Summer 2020 December 2020 Fall 2020 3. Crisis Response Network March 2020 3. CalAIM - Full Integration



Exhibit 5

VIA EMAIL and U.S. MAIL

County of Orange Thomas A. Miller, Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701 Thomas.Miller@ocgov.com

RE: Response No. 2

Ground Lease Compliance, 265 South Anita Drive, Orange ("Premises")

Dear Mr. Miller:

Thank you for your follow-up email dated September 11, 2024 requesting additional documentation to support Section 14.1 of Mind OC's current form of master sublease ("Sublease") for the Premises.

As requested, we are including detailed responses to the specific requests in your email. Any capitalized terms not defined in this letter shall have the meaning as set forth in the Sublease. All documents referenced below can be found in the box.com folder sent to you via email. Access to this folder will expire in ten (10) days.

1. The accounting of all "Operating Expenses" for the 2023 calendar years, as reference in Section 5.2.4 of the Office Lease between Mind OC and its sublessees.

As referenced in Section 5.2.4. of the Sublease, the accounting of all Operating Expenses for the 2023 calendar year can be found in the '1 & 2. 2023 Operating and Tax Expenses' folder, document titled 'Be Well OC Orange – Operating and Tax Expenses 2023', which includes footnotes with additional information defining actual and grossed up expenses.

2. The accounting of all "Tax Expenses" for the 2023 calendar years, as reference in Section 5.2.5 of the Office Lease between Mind OC and its sublessees.

As referenced in Section 5.2.5. of the Sublease, the accounting of all Tax Expenses for the 2023 calendar year can be found in the '1 & 2. 2023 Operating and Tax Expenses' folder, document titled 'Be Well OC Orange – Operating and Tax Expenses 2023', which includes a footnote with additional information regarding a welfare exemption received.

3. Please provide Mind OC's calculation of the total Usable Square Footage (USF) and Billable Square Footage (BSF) for the Anita facility, along with the assignment of USF and BSF for Mind OC and each subtenant of the Anita facility.

Mind OC's calculation of the (i) total Usable Square Footage (USF) (ii) total Billable Square Footage (BSF), and (iii) assignment of the USF and BSF for Mind OC and each subtenant of the Premises can be found in the '2. Building Calculations and Plan' folder.

Mind OC occupies a portion of the Wellness/Social Services Area to provide support of the Permitted Services and building operations pursuant to Sections 15.3 and 15.4 of the Ground Lease, which each tenant is allocated its pro rata share of such area.

Additionally, Exhibit A-2 'Tenant's Billable Square Footage Calculation' has been extracted from each of the six (6) subleases, and can be found in the 'Tenant Subleases Exhibit A-2' subfolder. Such square USF and BSF calculations align with the '265 S Anita – Billable Allocation by Suite' calculations.

4. Please provide floorplans of the Anita facility showing the square footages of the separate suites and common area and their occupancy.

The floor plans of the Anita facility showing the square footages of the separate suites and common area and their occupancy within the Premises can be found in the '4. Annotated Floorplans' folder.

Please do not hesitate to contact us if you have any additional questions.

Best regards,

MIND OC

Phillip Franks

Philly Franks

CEO

cc: Victor Jordan, CFO, Mind OC

Michelle Aguirre, Acting CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA

Exhibit 6

From: Phillip Franks
To: Miller, Thomas "Mat"

 Cc:
 brian.bauer@ocgov.com; Rosalie Zoll

 Subject:
 Response #2 - Ground Lease Compliance

 Date:
 Thursday, September 19, 2024 6:00:11 PM

Attachments: Mind OC Ground Lease Compliance Response Letter No. 2 2024.09.19.pdf

Outlook-Mind OC.pnq

Evening,

Attached is the response for the Ground Lease #2 as requested. Mat and Brian, you will both have access to the box.com link and should be able to see the information. If for some reason you can't please don't hesitate to reach out so we can resolve that for you.

Respectfully,

Phillip Franks

CEO

Mind OC / Be Well OC

18650 MacArthur Blvd. Ste. 350 Irvine, CA 92612 phillip.franks@mind-oc.org



Amber Bergkamp

Senior Executive Assistant

amber.bergkamp@mind-oc.org Cell: 949-386-0321

Mind OC (mind-oc.org)
BeWellOC.org

Exhibit 7

VIA EMAIL and U.S. MAIL

County of Orange Thomas A. Miller, Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701 Thomas.Miller@ocgov.com

RE: Response No. 1

Ground Lease Compliance, 265 South Anita Drive, Orange ("Premises")

Dear Mr. Miller:

Thank you for your letter dated September 6, 2024 regarding Mind OC's lease obligations under the Ground Lease dated June 17, 2019 ("Ground Lease") for the Premises.

We acknowledge the importance of complying with all terms and conditions of the Ground Lease. As requested, we are including detailed responses to the specific requirements you outlined in your letter. Any Capitalized terms not defined herein shall have the meaning as set forth in the Ground Lease. All documents referenced below can be found in the box.com folder sent to you via email. Access to this folder will expire in ten (10) days.

A. Section 4.2.1 (Required Services and Uses) lists the Permitted Uses for the Premises. Please provide the County with a list of all uses currently at the Premises for verification of compliance with this Ground Lease provision. Please be aware that any services and uses not listed identified in Article IV of the Ground Lease are not permitted under Section 4.2.4.

Pursuant to, and in compliance with, Section 4.2, the following Permitted Uses are currently being provided at the Premises ("Uses"):

- a) Be Well OC Behavioral Health Services campus;
- b) Wellness and Social Services;
- c) Crisis Stabilization Unit;
 - i. Exodus Recovery Inc. Suites 102, 103 and 104 (Adult and Adolescent CSU)
- d) Substance Use Disorder Intake and Referral;
 - i. Exodus Recovery Inc. Suite 101 (Sobering Center)
- e) Withdrawal Management;
 - i. HealthRight360 Suite 301 (Withdrawal)
- f) Crisis Residential; and
 - i. Exodus Recovery Inc. Suite 201 (Crisis Residential)
- g) Substance Use Disorder and Co-Occurring Residential Treatment.
 - i. HealthRight360 Suite 302 (Substance Use Disorder)
 - ii. HealthRight360 Suite 202 (Co-Occurring Residential Treatment)

Mind OC confirms that pursuant to Section 4.2.4, it is not using the Premises or permitting the use of the Premises for a Restricted Use, or any other purpose than what is listed in Section 4.2.1.

B. Section 4.2.7 (Permits and Licenses) requires that Mind OC obtain and maintain any and all permits and licenses required for the services and uses. Please provide any and all permits and licenses for the Premises and its operation.

All permits and licenses required for services and uses can be found in the '4.2.7 Permits and Licenses' folder.

C. Section 5.3 ("AS-BUILT" Plans) requires that Mind OC provide the County "As-Built" plans for the improvements constructed on the Premises, as well as the final construction cost for the construction of such improvements. Please provide the required items.

The Premises "As-Built" plans and the final construction cost backup for the construction of the Premises can be found in each respective subfolder within the '5.3 As-Built Plans' folder.

The final construction cost for the construction of the Premises is \$31,156,751.10.

D. Section 10.7 (Renter Subleases) lists certain requirements related to any Subleases at the Premises. Please provide the current form of Sublease, which is required to be approved by the County, along with copies of any and all current Subleases at the Premises.

The current form of Sublease which is in the same form as the initial subleases, and copies of all current Subleases at the Premises can be found in each respective subfolder within the 'Section 10.7 Renter Subleases' folder.

Current subleases include the following sublease documents:

Tenant	Suite(s)	Document(s)
Exodus Recovery, Inc.	101	1. Office Lease dated 9/7/22
	Sobering Center	2. 1st Amendment dated 1/1/23
Exodus Recovery, Inc.	102, 103, 104	1. Office Lease dated 12/14/20
	Adult and	2. 1st Amendment dated 1/1/23
	Adolescent CSU	3. 2 nd Amendment dated 9/19/24 (unexecuted)
Exodus Recovery, Inc.	201	1. Office Lease dated 11/1/20
-	Crisis Residential	2. 1st Amendment dated 1/1/23
		3. 2 nd Amendment dated 9/19/24 (unexecuted)
HealthRight 360	202	1. Office Lease dated 1/1/23
	COD Residential	2. 1st Amendment dated 9/30/24 (unexecuted)
HealthRight 360	301	1. Office Lease dated 1/1/23

	Withdrawal	2. 1st Amendment dated 9/30/24 (unexecuted)
HealthRight 360	302 SUD	Office Lease dated 1/1/23 1st Amendment dated 9/30/24 (unexecuted)

E. In addition, Section 10.7 contemplates that there will be multiple contracts "sufficient to sublease from [Mind OC] the entirety of the rentable services space within the Premises." As such, please provide accurate calculations of the gross square footage of the improvements on the Premises, along with a calculation of the "rentable services," with a building plan identifying these items.

The Premises (i) gross square footage calculations, (ii) "rentable services" calculations, and (iii) building plan can be found in the 'Building Calculations and Plan' subfolder within the '10.7 Renter Subleases' folder.

Additionally, per Section 10.7, "it is intended that the subleases with these service providers will in the aggregate, cover the costs of the building and the responsibilities of Tenant herein." Current subleases align with this requirement. The pro rata shares of all the sublease aggregate to 100%, as outlined in Section 1.7 (Tenant's Share) of the master form of sublease. Applicable Operating Expenses are defined in Section 5 (Operating Expenses) of the master form of sublease.

F. Finally, provide the current sublease rate for Sublessees along with the calculations used to justify that rate, and support for the components of the Sublessee rent.

Currently, building operations and future capital expenditures are funded directly by the County through the end of the Master Services Agreement term, or September 30, 2024 between Mind OC and the County.

Effective October 1, 2024, the proposed sublease rate for the Sublessees is:

\$3.01 per billable square foot per month (base rent)

\$2.74 per billable square foot per month (NNN)

\$5.75 per billable square foot per month (total monthly rent)

A 'Rental Valuation' PDF that justifies the current fair market base rate component for the Be Well OC Irvine campus ("Irvine Campus") can be found within the 'Fair Market Valuation' subfolder within the '10.7 Renter Subleases' folder. Similar to the Irvine Campus, the Premises is a class A building, in the greater Orange County area, has a specialized end user, and is fully furnished. This \$3.01 rate is the original base rent agreed upon prior to the Master Services Agreement.

Also included in the 'Fair Market Valuation' subfolder is a 'Lease Rate' spreadsheet. Anticipated actual costs are outlined in the spreadsheet which include both standard (similar to any other class A office building) and specialized (specific to the 24/7 residential nature of the Premises) NNN charges.

G. Pursuant to Section 15.3 (On-Site Manager), Mind OC is required to have an On-Site Manager for the Premises. Please provide the "name of the Manager currently so employed" by Mind QC for the management and operation of the Premises.

Anita Lewicke is Mind OC's on-site Campus Operations Manager.

H. Pursuant to Section 15.4 (Policies and Procedures to be Established by Tenant), please provide the "policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and uses required by the Lease," which are required to be reviewed and approved by the County.

The "policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and uses required by the Lease" can be found in the '15.4 Policies and Procedures to be Established by Tenant' folder. Such folder includes:

- (i) The Be Well Campus Operations Guide, which outlines Mind OC's internal processes for its oversight of the day-to-day operation and provision of permitted services; and
- (ii) The Tenant Handbook provided to tenants, which outlines essential information about the property and its operations, and communicates to tenants the rules, regulations and expectations for the tenants.

Mind OC has engaged an experienced real estate manager to oversee the Premises' day-to-day maintenance, cleanliness, and general order. This includes routine inspections, preventative maintenance, emergency repairs, vendor management, capital improvements, safety compliance, and tenant relations.

We are available to answer any questions you may have about these policies and procedures.

I. Pursuant to Section 15.4.5, please provide the public restroom maintenance schedule.

The public restroom maintenance schedule can be found in the '15.4.5 Restroom Maintenance' subfolder within the '15.4 Policies and Procedures to be Established by Tenant' folder.

In addition to the regular maintenance schedule, the janitorial vendor provides ongoing maintenance to the public restrooms, including both as-needed cleaning and routine checks throughout the day. A day porter is stationed in the Premises for 8 hours a day, 7 day per week. The day porter is an employee of Mind OC's janitorial vendor.

J. Please provide updated notice information pursuant to Section 18.19 (Notices) of the Ground Lease, as that information appears outdated.

If to Tenant:

Mind OC

Attention: Victor Jordan, CFO 18650 MacArthur Blvd, Suite 350

Irvine, CA 92612

Email: victor.jordan@mind-oc.org

With a copy to:

Allen Matkins

Attention: Gary S. McKitterick, Esq.

2010 Main Street, 8th Floor

Irvine, CA 92614

Email: gmckitterick@allenmatikins.com

Thank you for reviewing the materials provided. Our team is available to answer any questions you might have about the information presented. Please do not hesitate to contact us with your inquiries.

Mind OC is committed to fulfilling our responsibilities under the Ground Lease and maintaining a positive relationship with the County of Orange.

Best regards,

MIND OC

Phillip Franks

CEO

cc: Victor Jordan, CFO, Mind OC

Philly Franks

Michelle Aguirre, Acting CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA

From: <u>Victor Jordan</u>

To: Rosalie Zoll; Kayla Sotelo; Loara Cadavona; Blair Contratto; Desiree Thomas; Nicole Ramirez

Cc: Phillip Franks

Subject: FW: Mind OC CT0265460

Date: Thursday, September 26, 2024 1:42:19 PM

Attachments: Mind OC Annual Registration Form FY22 - RRF-1 Signed; CA RRF-1.pdf

USPS receipt for RRF 1 sent.pdf

Mind OC Tax Form 990 for FY22 (public inspection).pdf

Pls see below relative to letter county sent today on breaches in our land lease. State DOJ has all documents needed <code>ncluding</code> our \$800 check

Victor Jordan, plCFO

Mind OC

Executive Assistant,
Amber Bergkamp

amber.bergkamp@mind-oc.org

949.386.0321

From: Victor Jordan

Sent: Friday, September 20, 2024 11:53 AM

To: 'rrf@doj.ca.gov' <rrf@doj.ca.gov>

Cc: Phillip Franks <phillip.franks@mind-oc.org>; Valerie Fryer <Valerie.Fryer@mind-oc.org>

Subject: FW: Mind OC CT0265460

Dear DOJ,

When preparing our 2023 tax returns, we noted that we (Mind OC CT0265460) inadvertently missed the mailing of our 2022 Form RRF-1. When we discovered the issue, we mailed the packet with the check on September 11, 2024 via certified return receipt (receipt attached). Unfortunately, the USPS has failed to deliver the package and they still show it as pending delivery.

We were in touch with the USPS tracking today (see attached receipt) and here is the update on the status: package was scheduled for Sept 14th arrival to CA Registry of Charitable Trusts but as of today USPS confirmed it has not been delivered. We are resending a new overnight package today via FedEx for Monday arrival, Sept. 23rd.

We have attached a signed copy of the Form RRF-1. We have also attached Form 990 signed.

Please let us know if there is anything additional we need to provide in order to clear the status of the organization to "current."

We appreciate your assistance!

Victor Jordan, CFO Mind OC

508.340.6228



OFFICE OF THE COUNTY COUNSEL COUNTY OF ORANGE

400 WEST CIVIC CENTER DRIVE, SUITE 202 SANTA ANA, CA 92701 MAILING ADDRESS: P.O. BOX 1379 SANTA ANA, CA 92702-1379 (714) 834-3300 FAX: (714) 560-4552 Michael A. Haubert Senior Deputy County Counsel (714) 474-7180

E-Mail: Michael.haubert@coco.ocgov.com

October 25, 2024

Jeffrey M. Singletary Snell & Wilmer 600 Anton Blvd., Suite 1400 Costa Mesa, CA 92626 Email: singletary@swlaw.com

. singletary & swiawiesin

Re: Response to Mind OC's October 4, 2024 Letter

Dear Mr. Singletary:

The County is in receipt of your letter dated October 4, 2024, in response to the County's Notice of Default sent on September 26, 2024 ("Notice"). The County disagrees with your client's positions on the various issues set forth in the County's Notice. Nevertheless, the County welcomes the opportunity to discuss the possibility of an amicable resolution to the issues raised by the County if the parties can indeed move forward "with a clearer understanding...on compliance" with the Lease.

The County deems it necessary to explain where it deviates from your client's opinion on the matters raised in the Notice, as outlined below.

The County Never Approved the Subleases Previously Executed by Mind OC

The County has not approved any Subleases and denies the example provided in your October 4 letter is evidence of the Chief Real Estate Officer's approval. First, review and approval of all form Subleases was supposed to have taken place *prior* to the Subleases taking effect. No form Subleases were received by the Chief Real Estate Officer until Phillip Franks delivered hard copies of the Subleases to the Chief Real Estate Officer on September 9, 2024, as well as proposed amendments to the Subleases. On that date, Mr. Franks was told that the County would need to review the Subleases and would get back to Mind OC with any questions or issues. At no time, on that date, or any other, did the Chief Real Estate Officer approve the Subleases. We are still unable to do so, as all of the requested information for the County's full review has not been delivered.

Your letter indicates that the County Chief Real Estate Officer requested that the amendments to the Subleases delivered by Phillip Franks be signed by the Subtenants and this is

evidence of approval. While the County did approve going forward with execution of the amendments to ensure that the facility remained in operation, the assertion that this signified approval on the underlying Subleases is inaccurate. As Mr. Franks knows from discussions with both the Chief Real Estate Officer and the Deputy Chief Real Estate Officer, allowing Mind OC to move forward with the amendments to these with Subleases was just an accommodation to keep services running at the Anita facility while the review of the Subleases and supporting documentation was ongoing. As detailed below, Mind OC still has not provided information to the County sufficient to permit it to properly approve these Subleases. As such, the Subleases remain unapproved by the County as the process required by the Lease terms has not been followed by Mind OC, and, as outlined below, the County lacks the necessary information to provide such approval at this time.

Mind OC's Interpretation and Practice for Rental Fees in the Subleases is Not Supported by the Lease

Mind OC applies an artificial and self-serving interpretation to the rental fees that can be charged in the Subleases by inserting "at least" into its reading of the Lease language, as summed up in the October 4 letter: "[T]he rent from subleases will at least 'in the aggregate', cover the costs of the building and responsibilities of Mind OC as the tenant." As a result, your client's rather bold and unreasonable position is that the Lease "in no way limits rents to be collected by Mind OC[]" because "[t]his is a floor and not a ceiling on rents to be collected from subtenants." By this rationale, Mind OC can charge whatever amount it so desires; yet, Mind OC expects the County to act "reasonably" when the County enters into contracts with service providers whose payments fund the Subleases. The bottom line on this point is: All parties to a contract are bound to reasonableness and the County merely expects Mind OC to be so bound when establishing a Sublease's rental fee. The October 4 letter mentions Mind OC charging "market rents" without citing any justification from the Lease or otherwise for Mind OC's Sublease rent calculation, nor any evidence that the total Sublease fees (including base rent and Direct Expense reimbursement) are in fact within market. However, the County has not been provided sufficient information by Mind OC that would allow for the County to determine if the total Sublease fees are in fact within market or are sufficient "to cover the costs of the building and the responsibilities of Tenant herein," as required by the Lease.

To enable the County to perform an evaluation, the County requires detailed line-item information about Mind OC's expenses for operations, tax expenditures, and any other costs owed by Mind OC per the Lease. For clarity on this request, the Subleases provided by Mind OC define certain "Direct Expenses" that are passed on the sublessee pursuant to Section 5.2.2 of the Subleases. The County needs a full accounting of these Direct Expenses at least for the last available calendar year (2023). This should include all costs and expenses related to Mind OC's management and operation of the facility. Additionally, the County requires detailed information about all revenue sources for Mind OC for the 2023 calendar year. To date, Mind OC has only

provided a summary one-page Operating Expense accounting that is woefully inadequate for this purpose. Moreover, the County also needs to know Mind OC's projections for capital improvements since that will relate to future costs and expenses for the facility.

The County looks forward to discussing these issues and having Mind OC provide an explanation of how it derived the Sublease rental rates and how they are "market rates," with the inclusion of the reimbursement of Direct Expenses under the Subleases.

Mind OC's Use of the Premises Have Not Been Clearly Communicated Nor Approved

The County takes exception with your client's claim that it "responded in writing to each demand for information and timely delivered all information sought." Detailed information on Mind OC's occupation of the Premises for its own uses have not been provided to the County. The County still does not know what areas are used by Mind OC, how much square footage is being used, and for what specific purposes. Moreover, Mind OC has not provided detailed policies and procedures for the client check-in process or activities performed by Mind OC's lobby staff for such purposes. Without such information, the County cannot verify if Mind OC is in compliance with the Lease terms. In addition, the County needs to verify that any laws applicable to the handling of protected health information are being adhered to with respect to the lobby and check-in procedures. Keep in mind that this is a County funded health care facility and it is imperative that the County have complete knowledge on the operation of the facility and the services being provided therein.

Further, it remains unclear whether any third parties—that is, parties other than Mind OC or a County service provider—have been using and/or continue to use the Premises. For example, the County has been approached recently by Mind OC to host a meeting with what appears to be a pre-existing and ongoing use of the Premises by the Orange County chapter of the National Alliance on Mental Illness.¹ This use was never tendered to the County for review and approval. The County continues to request that Mind OC disclose all details surrounding all uses by any parties whatsoever at the Premises, whether these are Additional Services, Ancillary Services and Uses, etc.

Mind OC is limited to operating and maintaining the Premises. See Section 4.1 of the Lease. County service providers are intended to occupy the entirety of the rentable area of the Premises through approved Subleases. Any uses beyond those provided by the County service

¹ Mind OC just recently disclosed a proposed City Managers and Police Chiefs Meeting, and a recurring SUD Alumni Support Meeting. The County cannot properly assess these uses without Mind OC providing the information previously requested by the County regarding how the use of the conference rooms complies with the Permitted Uses in the Lease.

providers are to be reviewed and approved by the County. This is an issue that will require the parties to sort through and resolve if the Lease is to continue.

<u>The County Acknowledges Mind OC Cured its Delinquent Status, but Took over 2 Years</u> to do So

Until recently, Mind OC has been delinquent with its charitable organization status since 2022, according to the state Attorney General's online information. The County has confirmed that Mind OC is no longer "Delinquent" as a charitable organization with the state Attorney General's Office and considers this issue to be cured. The County reminds Mind OC that failure to stay in good standing with its charitable organization status could result in holding Mind OC in default of the Lease.

Conclusion

At the outset of this letter, the County stated its interest in discussing and resolving the issues related to the Lease. To that end, the County would like to schedule a meeting that includes all necessary Mind OC representatives. Please let us know your and your client's availability during the week of October 28, 2024, so a meeting can be arranged. We would appreciate receipt of the above requested information prior to the meeting.

The County looks forward to working with you to ensure that the Be Well Orange campus functions in compliance with the Lease and all applicable laws.

Very truly yours,

LEON J. PAGE COUNTY COUNSEL

MICHAEL A. HAUBERT

cc: Michelle Aguirre, Interim CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA

Thomas (Mat) Miller, Chief Real Estate Officer, CEO Real Estate

October 30, 2024

By Email Only - michael.haubert@coco.ocgov.com
Michael Haubert
Office of the County Counsel
County of Orange
400 W. Civic Center Drive, Suite 202
Santa Ana, CA 92701

Re: Mind OC / Information for October 31, 2024 Meeting

Dear Mr. Haubert,

Thank you for the letter dated October 25, 2024. We look forward to the meeting tomorrow to discuss the Ground Lease. Mind OC desires an amicable resolution and a productive partnership with the County for many years to come. Included with your substantive reply are several requests for information. Mind OC is working to retrieve relevant information, but in good faith provides the following in advance of the meeting:

Exhibit 1: Operating expense detail for 2023;

Exhibit 2: Projected capital expenditures; and

Exhibit 3: Floorplan with Mind OC's use of the premises.

We are hopeful this information will guide a productive meeting to resolve all alleged claims of default. In the unlikely event that no resolution can be reached at the meeting tomorrow, Mind OC reserves the right to respond further to any ongoing and unresolved contentions detailed in your letter. Mind OC strongly believes that there is no default of the Ground Lease and the evidence supports its position that the County approved the subleases, Mind OC acted reasonably and in good faith and pursuant to the terms of the Ground Lease, and its use of the premises is permitted. Thank you.

Very truly yours,

Snell & Wilmer

Jeffrey M. Singletary

Enclosures 4880-5904-8436

2023 MIND OC Operating Expenses (includes Property Taxes) 265 S Anita Dr, Orange, CA

Operating Expenses		Actual * 2023	Gross up ** 2023
CLEANIN	NG .		
40-110	CLEAN - Dayporter	96,672.72	96,672.72
40-220	CLEAN - Janitorial	146,508.47	174,819.98 Gross up to 95% occupancy before pass thru per Section 5.2.4
40-225	CLEAN - Non-Recurring Service	5,430.68	5,430.68
40-320	CLEAN - Window Cleaning	6,222.00	6,222.00
40-460	CLEAN - Supplies / Materials	34,494.80	41,160.63 Gross up to 95% occupancy before pass thru per Section 5.2.4
40-520	CLEAN - Trash Collection	8,388.84	8,388.84
	TOTAL CLEANING	297,717.51	332,694.85
REPAIRS	S/MAINTENANCE		
41-100	R&M - On-Site Maintenance Engineer	122,267.17	122,267.17
41-125	R&M - Non-Recurring Service	27,415.62	27,415.62
41-190	R&M - Miscellaneous	4,187.72	4,187.72
	TOTAL REPAIRS/MAINTENANCE	153,870.51	153,870.51
ELEVATO	ORS		
41-220	ELEV - Contract Service	7,042.79	7,042.79
41-225	ELEV - Non-Recurring Service R&M	500.55	500.55
41-250	ELEV - Permits/Lic/Inspect/Test	2,154.00	2,154.00
	TOTAL ELEVATORS	9,697.34	9,697.34
HVAC			
41-320	HVAC - Contract Service	22,590.95	22,590.95
41-325	HVAC - Non-Recurring Service R&M	5,052.00	5,052.00
41-360	HVAC - Supplies / Materials	332.69	332.69
	TOTAL HVAC	27,975.64	27,975.64
ELECTRI	ICAL		
41-420	ELEC - Contract Service	2,656.60	2,656.60
41-425	ELEC - Non-Recurring Service R&M	6,642.69	6,642.69
41-440	ELEC - Tools / Equip (directly exp)	38.75	38.75
41-460	ELEC - Supplies / Materials	1,238.76	1,238.76
41-461	ELEC - Bulbs / Lamps	34.42	34.42
	TOTAL ELECTRICAL	10,611.22	10,611.22
PLUMBIN	NG		
41-620	PLMBG - Contract Service	10,620.00	10,620.00
41-625	PLMBG - Non-Recurring Svc R&M	25,181.41	25,181.41
41-640	PLMBG - Tool / Equip (directly exp	215.49	215.49
41-655	PLMBG - Backflow Testing	686.00	686.00
41-660	PLMBG - Supplies / Materials	12,590.67	12,590.67

	TOTAL PLUMBING	49,293.57	49,293.57	
FIRE & LI	FE SAFETY			
41-720	FIRE - Contract Service	9,174.51	9,174.51	
41-740	FIRE - Telephone	457.80	457.80	
41-760	FIRE - Supplies / Materials	96.64	96.64	
41-790	FIRE - Miscellaneous	822.76	822.76	
	TOTAL FIRE & LIFE SAFETY	10,551.71	10,551.71	
GENERA	L BUILDING R/M (Interior)			
41-825	BLDGI - Painting / Finishes (NC)	10,659.61	10,659.61	
41-835	BLDGI - Supplies / Materials	3,473.72	3,473.72	
41-840	BLDGI - Miscellaneous	1,358.00	1,358.00	
41-845	BLDGI - General / Other	7,777.33	7,777.33	
41-847	BLDGI - Keys / Locks / Doors	4,265.28	4,265.28	
	TOTAL GENERAL BUILDING R/M (Interior)	27,533.94	27,533.94	
GENERA	L BUILDING R/M (Exterior)			
41-860	BLDGE - Painting / Finishes (NC)	10,667.40	10,667.40	
41-867	BLDGE - Doors	10,279.37	10,279.37	
	TOTAL GENERAL BUILDING R/M (Exterior)	20,946.77	20,946.77	
UTILITIES	5			
40.400	UTIL - Electricity	151,630.51	470 070 00 0	there are to OCOV accompanies before more than more Continue C. o. A.
42-100	OTIL - LIECTICITY	151,030.51	1/0,0/0.30 G	ross up to 95% occupancy before pass thru per Section 5.2.4
42-100	UTIL - Gas		· · · · · · · · · · · · · · · · · · ·	cross up to 95% occupancy before pass thru per Section 5.2.4
	•	41,284.57	41,284.57	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200	UTIL - Gas		· · · · · · · · · · · · · · · · · · ·	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES	41,284.57 8,709.93	41,284.57 8,709.93	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING	41,284.57 8,709.93 201,625.01	41,284.57 8,709.93 220,670.86	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service	41,284.57 8,709.93 201,625.01 18,790.00	41,284.57 8,709.93 220,670.86 18,790.00	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING	41,284.57 8,709.93 201,625.01	41,284.57 8,709.93 220,670.86	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSCA 43-120 43-125	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING GROUNDS EXPENSES	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING GROUNDS EXPENSES OTHER GRNDS - Pressure Washing	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420 43-430	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING GROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420 43-430 43-480	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING BROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M OTHER GRNDS - Lot Sweeping	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69	ross up to 95% occupancy before pass thru per Section 5.2.4
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42-200 42-650 LANDSC/ 43-120 43-125 OTHER 6 43-420 43-430 43-480 43-521	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING BROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M OTHER GRNDS - Lot Sweeping OTHER GRNDS - Pest Control TOTAL OTHER GROUNDS EXPENSES	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420 43-430 43-480 43-521 SECURIT	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING GROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M OTHER GRNDS - Lot Sweeping OTHER GRNDS - Pest Control TOTAL OTHER GROUNDS EXPENSES	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47	ross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420 43-430 43-480 43-521 SECURIT 44-220	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING BROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M OTHER GRNDS - Lot Sweeping OTHER GRNDS - Pest Control TOTAL OTHER GROUNDS EXPENSES	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47 270,638.35	iross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420 43-430 43-480 43-521 SECURIT	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING GROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M OTHER GRNDS - Lot Sweeping OTHER GRNDS - Pest Control TOTAL OTHER GROUNDS EXPENSES Y SEC - 24/7/265 Security Guard SEC - Telephone	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47 270,638.35 878.22	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47 270,638.35 878.22	iross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420 43-430 43-480 43-521 SECURIT 44-220	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING BROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M OTHER GRNDS - Lot Sweeping OTHER GRNDS - Pest Control TOTAL OTHER GROUNDS EXPENSES	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47 270,638.35	iross up to 95% occupancy before pass thru per Section 5.2.4
42-200 42-650 LANDSC/ 43-120 43-125 OTHER G 43-420 43-430 43-480 43-521 SECURIT 44-220	UTIL - Gas UTIL - Water & Sewer TOTAL UTILITIES APING L/S - Contract Service L/S - Non-Recurring Service R&M TOTAL LANDSCAPING BROUNDS EXPENSES OTHER GRNDS - Pressure Washing OTHER GRNDS - Prk Lot R&M OTHER GRNDS - Lot Sweeping OTHER GRNDS - Pest Control TOTAL OTHER GROUNDS EXPENSES Y SEC - 24/7/265 Security Guard SEC - Telephone TOTAL SECURITY	41,284.57 8,709.93 201,625.01 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47 270,638.35 878.22	41,284.57 8,709.93 220,670.86 18,790.00 30,565.09 49,355.09 2,400.00 459.78 17,530.69 4,070.00 24,460.47 270,638.35 878.22	iross up to 95% occupancy before pass thru per Section 5.2.4

	DMIN - Teleph / Pagers / Internet	11,240.59		
45 560 AT		11,270.00	11,240.59	
45-500 AL	DMIN - Supplies / Materials	94.81	94.81	
45-565 AE	DMIN - Postage/Courier/Delivery	23.52	23.52	
45-590 AE	DMIN - Miscellaneous	210.00	210.00	
45-614 A[DMIN - Maintenance Van Reimb / Mileage	12,018.35	12,018.35	
TC	OTAL ADMINISTRATIVE	261,587.33	261,587.33	
PARKING OPE	ERATIONS			
46-190 PF	RKG - Miscellaneous	10.23	10.23	
TC	OTAL PARKING OPERATIONS	10.23	10.23	
TAXES				
47-110 Re	eal Estate Taxes	231,414.66	231,414.66	Invoices summarized below
TC	OTAL TAXES	231,414.66	231,414.66	-
INSURANCE				
47-410 IN	ISUR - Ground Lease Requirements	118,137.11	118,137.11	_
TO	OTAL INSURANCE	118,137.11	118,137.11	
LICENSE/FEE	S/PERMITS			
47-510 Lie	cense / Fees / Permits	600.00	600.00	
TC	OTAL LICENSE/FEES/PERMITS	600.00	600.00	
Total Opera	iting Expenses before Mind OC Staffing	1,766,904.68	1,820,927.86	
Mind OC G	uest Services Coordinator	133,788.60	133,788.60	Includes base wage/salary plus 25% for benefits/taxes
Mind OC Ca	ampus Operations Manager	150,461.54	150,461.54	Includes base wage/salary plus 25% for benefits/taxes
Mind OC Sta	affing	284,250.14	284,250.14	Per Section 5.2.4(vii)
Total Opera	ting Expense	2,051,154.82	2,105,178.00	<u>.</u>

^{*} In 2023 building was not fully occupied; expenses do not reflect full occupancy of building. See Gross up column for janitorial and electricity expenses which are variable with building occupancy.

2023 Property Taxes:

Parcel 232-041-02 2022/23 2nd Installment	8,453.97
Parcel 988-069-69 2022/23 2nd Installment	101,982.79
Parcel 232-041-02 2023/24 1st Installment	8,721.96
Parcel 988-069-69 2023/24 1st Installment	112,255.94
	231,414.66

^{** 2023} Operating expenses were reimbursed through Mind OC's MSA with County of Orange in lieu of pass thru to the tenants. During 2023 all rents, including operating expenses, were abated as they were paid in their entirety through the MSA. While a gross-up provision is included in the lease, the actual cost did not require adjustment for the MSA reimbursement.

^{***} In 2023 County Assessor's Welfare Exemption Office awarded a welfare exemption for exempt space within the building. A separate reconciliation of refunded property taxes (received and deposited in 2024) is available upon request.

Be Well Orange Campus - Capital Projections 265 S. Anita Dr, Orange, CA Prepared 05.25.2022

DRAFT

Building Component	Life (in Years)	Estimated Cost (1)	Projected Cost (2)	Annual Reserve	Monthly Reserve	Notes
Roof Replacement	20	200,000	297,189	14,859	1,238	Est \$10/SF * 20,000 SF
HVAC Replacement	20	250,000	371,487	18,574	1,548	PM Estimate
Exterior Paint	10	50,000	60,950	6,095	508	PM Estimate
Asphalt Slurry/Seal	2	15,000	15,606	7,803	650	PM Estimate
Elevator Modernization (x2)	20	150,000	222,892	11,145	929	PM Estimate
Garage Door Equipment (x2)	10	20,000	24,380	2,438	203	PM Estimate
Boiler Replacement (x2)	10	30,000	36,570	3,657	305	PM Estimate
Sewer Lift Station Pump Replacement (x3)	5	30,000	33,122	6,624	552	PM Estimate
Artwork/Plastic Plants/Décor Replacement	20	34,597	51,410	2,570	214	Based on actual cost
Interior Signage Replacement	20	57,815	85,910	4,295	358	Based on actual cost
Interior Equipment (AV, Phone Equip, Etc.) Replacement	7	278,253	319,625	45,661	3,805	Based on actual cost
Exterior Furniture Replacement	10	131,194	159,925	15,993	1,333	Based on actual cost
Interior Furniture Replacement	10	1,231,647	1,501,371	150,137	12,511	Based on actual cost
Tenant Improvement (Refresh) (3)	5	1,819,800	2,009,206	401,841	33,487	Estimated \$30/RSF
Tenant Improvement (Major) ⁽⁴⁾	20	10,312,200	15,323,387	766,169	63,847	Estimated \$200/RSF (\$170/RSF plus \$30/RSF from above)
				1,457,863	121,489	

Additional Notes:

⁽¹⁾ Estimated values as of today

⁽²⁾ Includes 2% escalation per year until replacement

⁽³⁾ Estimated cost for paint and flooring

⁽⁴⁾ Estimated cost for paint, flooring, millwork, fixtures (including anti-ligature items)

Legend

CSU – Adolescent
Exodus Recovery Inc.
1,899 USF

SUD (Sobering)
TBD
2,044 USF

CSU - Adult

Exodus Recovery Inc.
1,934 USF

CSU Support Areas

Exodus Recovery Inc.
3,163 USF

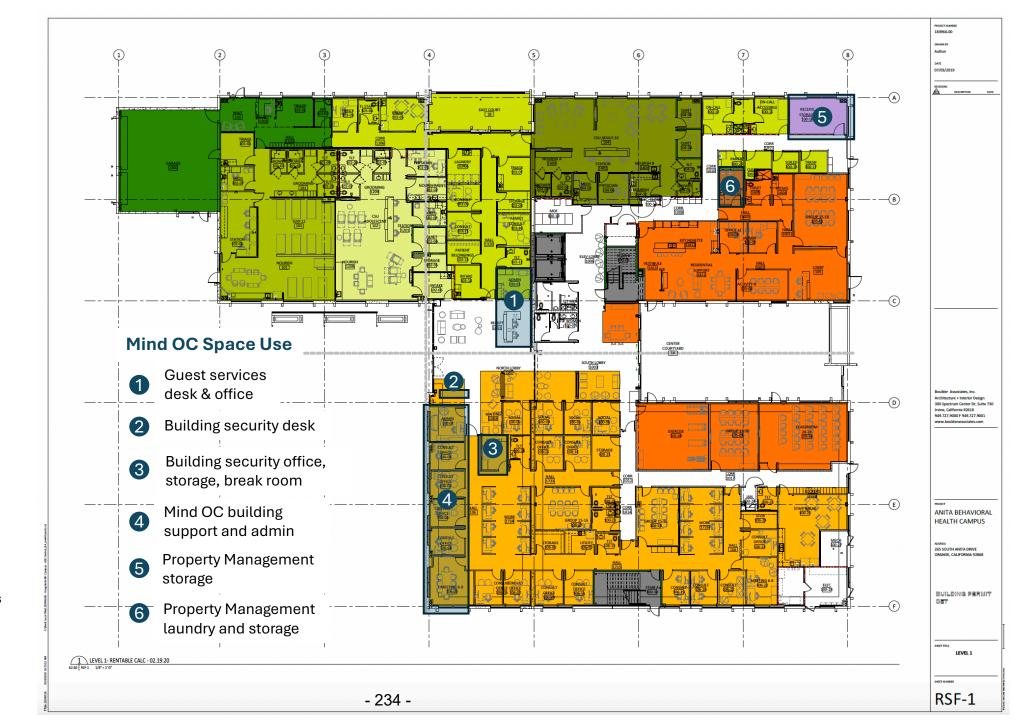
CSU & SUD Shared Triage
Exodus Recovery Inc.
1,730 USF

Floor Amenity Area
Property Management
248 USF

Shared Residential (Classrooms, meeting spaces, kitchen, gym) *Exodus, HR360* 4,281 USF

Wellness / Social Services
Exodus, HR360, Mind OC
7,023 USF

Lobby & Circulation 4,268 USF



Legend

Crisis Residential

Exodus Recovery Inc.
8,046 USF

Co-occurring Residential

HealthRight360

9,699 USF

Lobby & Circulation 722 USF



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MINION CONTROL

BOULDER ASSOCIATES ARCHITECTS

Boulder Accordes, Inc. Auchtrecture + Interior Design 300 Spectrum Center Dr., Suite 780 Indine, California 50408 549-727-5000 F 949-727-5003 www.boulderscootsides.com

ANITA BEHAVIORAL HEALTH CAMPUS

ACRESIS DUTH ANTA DRIVE CRANCE, CALIFORNIA SIBIR.

BUILDING PERMIT

1 ----

HEFTEN

RSF-2

Legend

Withdrawal Management
HealthRight360
6,728 USF

Substance Use Residential

HealthRight360

8,304 USF

Lobby & Circulation 571 USF



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Author

07/08/2019 M-10000

> BOULDER ASSOCIATES ARCHITECTS

Boulder Associates, Inc. Architecture 4 Interior Design 300 Spectrum Center Dr., Suite 750 Indive, California 93608 948-727-9000 P 948-727-9003 www.boulderscools/bes.com

ANITA BEHAVIORAL HEALTH CAMPUS

ACOUNT 265 SOUTH AMETA DRIVE CRANCE, CALIFORNIA 92808

BUILDING PERMIT SET

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RSF-3





Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701

November 5, 2024

VIA EMAIL and U.S. MAIL

Phillip Franks, CEO Mind OC 18600 MacArthur Blvd., Suite 350 Irvine, CA 92612 phillip.franks@mind-oc.org

SUBJECT: County Service Coordination and Clinical Oversight Plan, 265 South Anita Drive

Greetings,

Initially we want to thank you for your cooperation as we coordinate an appropriate service delivery structure for the Be Well Orange facility. As you are aware, Mind OC leases the property located at 265 South Anita Drive in the City of Orange ("Premises") from the County of Orange ("County") pursuant to that certain Ground Lease, dated June 17, 2019 ("Ground Lease") for the purposes of constructing and operating "a Be Well OC Behavioral Health Services Campus" ("Project"). In addition to reviewing the service delivery operations at the campus, we have also been working with you on certain Ground Lease compliance issues. We are in receipt of your attorney's letter dated October 30, 2024, transmitting additional information and will be following up on those matters soon. We also understand that there will be additional information forthcoming from Mind OC later this week.

As you are aware, the Ground Lease for the Project was entered into "for the purposes of designing and constructing a wellness hub." In addition, it was contemplated that "the County [would] be party to multiple contracts for services through the Lease term...sufficient to occupy the entirety of the rentable services space...[to cover]...the costs [for] the responsibilities of [Mind OC] herein." After the construction of the Project, Mind OC's role under the Ground Lease was the property management of the Project.

Pursuant to the terms of the Lease, the County has entered into service contracts with service providers for the majority of the rentable space at the Project. As we have reviewed the providers on-site along with the various services being delivered, the County has identified a need for changes in the operational structure for the services provided. As Mind OC is not a service provider and per the Lease has no responsibility for the provision of services, this will necessitate

Page 2

County Health Care Agency ("HCA") staff to be stationed on-site to coordinate the intake process and the services, as well as to provide linkage to off-site services. The Project is a behavioral health facility supported by public funds and needs to be operated consistent with other County supported public health facilities within Orange County. Attached hereto as Attachment A is the County's plan for service coordination and clinical oversight.

We understand that HCA occupancy of space within the Project will necessitate a Sublease to be executed with Mind OC and we look forward to discussing this matter. Moving forward, the County is pleased to meet and discuss this plan and the process to facilitate this plan as soon as possible. However, in any event this needs to occur on or before November 15, 2024.

We look forward to your anticipated cooperation.

Regards,

Thomas A. Miller

Chief Real Estate Officer

Encl

CC:

Michelle Aguirre, Interim CEO, County of Orange Dr. Veronica Kelley, Director, HCA, County of Orange Richard Afable, Board Member, Mind OC Mark E. Costa, Board Member, Mind OC Marcia Manker, Board Member, Mind OC Rabbi Richard Steinberg, Board Member, Mind OC Bill Taormina, Board Member, Mind OC Ali Santore, Board Member, Mind OC Steve Pitman, Mind OC Michael Haubert, Senior Deputy County Counsel Jeff Singletary, Snell & Wilmer



Attachment A Be Well Orange Services Management

At the Campus in Orange the treatment of clients coming through the campus can happen in several areas. Often clients call the campus for services, come in for services, or need help navigating to future treatment when they leave. In order to ensure clients are receiving the best care possible in all these situations Health Care Agency (HCA) employees will need to have an onsite presence to provide treatment and ensure clients get to the most appropriate level of service for them as quickly as possible, and to ensure the proper handling of protected health information. This may be one of the services provided by the campus or it may not, and the on-site HCA team will need to assess clients quickly to determine this. In order to accomplish this goal and properly run the services for the entire campus, the HCA team will need the following:

- 1. Two (2) offices for the administrative management of the property to provide oversight and clinical direction over HCA on-site services and to coordinate on a day-to-day basis with providers at the campus.
- HCA will need to have access and a presence in the lobby and wellness/social services area to provide client care in these areas and ensure proper handling of clinical records being stored.
- 3. HCA Team will have two (2) staff located at front desk to direct client flow for the campus and ensure proper handling of protected health information.
- 4. HCA Team will need two (2) offices for Outreach and Engagement staff stationed at the campus to act as clinical leads, providing necessary screening to direct clients to appropriate services.
- 5. HCA Team will need two (2) offices for peer support staff to work directly with clients in linking to services and providing de-escalation and care navigation services.
- 6. HCA Team will need an office for one (1) staff from the ART Team on site to do initial assessments for SUD Residential Treatment.
- 7. HCA Team will have two (2) contract support clinicians on-site stationed with the two contract providers (HR360 and Exodus) to provide technical assistance and support to the providers as needed, including on regulations applicable to the handling of protected health information.
- 8. HCA Team will need an office for (1) eligibility technician on campus who can help clients apply for Medi-Cal if they do not already have it.
- 9. All outward facing communication by Mind OC related to the Orange campus should only address building operations and facility management.
- 10. Phone numbers that have been advertised as numbers to call for service or information on services will need to be answered by HCA staff. There should be a separate phone line for facility maintenance issues that Mind OC will answer.
- 11. Mind OC employees should only occupy areas where there is no treatment of clients occurring and there are no clinical records of clients present.



Via Email and U.S. Mail

Thomas A. Miller Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701 thomas.miller@ocgov.com

SUBJECT: Response to Your Letter of November 5, 2024 Be Well Orange Campus Hub 1

Greetings,

We wanted to get back to you as quickly as possible to your letter of November 5, 2024 ("Your Letter") to make sure we are on the same page and can implement what may be required for the Be Well Orange Campus Hub 1 ("Orange Campus-Hub 1"). To properly respond, we need to clarify and/or confirm certain premises upon which Your Letter was based.

PREMISES: CLARIFICATION

1. The Orange Campus-Hub 1 was financed in substantial part with private funds. See Agenda Staff Report of 6/11/19 on which the Orange Campus-Hub 1 Ground Lease was authorized, i.e. "designed to demonstrate the feasibility of a new public and private payment model".

"The HCA program planning process for the Wellness Campus evolved in conjunction with the creation of Be Well OC. Be Well OC is a coalition of behavioral health stakeholders, both in the private and public sectors, including CalOptima, hospitals (Hoag, Providence St. Joseph Health and Kaiser Permanente, collectively, Hospitals), non-profit, academic and faith-based organizations. The goal of Be Well OC is to establish a coordinated, Countywide behavioral health services system including the establishment of regional wellness hubs, such as the Wellness Campus envisioned for this Property. By collaborating with Be Well OC, an opportunity emerged for a public-private partnership between HCA and Mind OC."

Mind OC has a service role at the Orange Campus-Hub 1 to coordinate the countywide behavioral health care proposed and supported through both public and private grant funds, and in particular the Be Well Hub 1 campus at Orange and the Hub 2 campus being built in Irvine.

2. Pursuant to the funding for this public private partnership, it was anticipated that private pay patients and their payors would account for an anticipated 26% of the total revenue, resulting in a step down benefit and offset to the costs otherwise incurred by the County in payment for HCA specific beneficiaries, i.e. Medi-Cal and indigent patient ("HCA Beneficiaries") processed through HCA's through its "OC Links" system, which is currently unable to accommodate private insurance beneficiaries ("Privately Funded Beneficiaries") seeking these same behavioral health services intended to be provided as a "community" asset.

3. Mind OC retains the responsibility not necessarily as a "provider" of behavioral health services, but to provide coordination of care for all the parties intended to be served by this public private funded community asset, i.e. both HCA Beneficiaries and Privately Funded Beneficiaries, whether performed at the Orange Campus-Hub 1 or Irvine Campus-Hub 2. See the same Agenda Staff Report above:

MIND OC is a 501(c)(3) created to support the advancement of Be Well OC and the OC behavioral health system of care. The MIND OC governance board is comprised of a cross-sector, multidisciplinary team of OC leaders. MIND OC has three primary areas of focus: 1) mental health and wellness infrastructure development, 2) value optimization and transparency in mental health and substance use disorder services and 3) Be Well OC sustainability and public/private partnerships. The First Amendment to the Agreement with MIND OC for the design and construction of the Be Well OC Behavioral Health Services campus allows for the pass through of the CalOptima financial commitment.

As noted, Mind OC was not only appointed to coordinate the services to be provided to the Privately Funded Beneficiaries but also as an express designee of CalOptima to support its beneficiaries.

As noted more recently noted in the Supplemental Agenda Staff Report of May 7, 2024, Mind OC was intended to oversee "a wide range of critical and comprehensive behavioral health services to County residents at two centralized locations" and further noting that the Mind OC established relationship with relevant stakeholders are uniquely important and necessary experiences to oversee the behavioral health services portion. "No other provider in Orange County has this combination of experience."

QUESTION: Has the Board of Supervisors requested and received any later Agenda Staff Reports or taken any action as a Board that would change this understanding, addressing the duty owed to the private stakeholders? If so, please provide that report so that Mind OC is not accused of abandoning its responsibilities to the private stakeholders and CalOptima based upon the requests made in Your Letter, or confirm that Mind OC has a continuing service role on the Orange Campus-Hub 1 to pursue the interests of the private stakeholder in coordination with HCA to help offset the costs to the County of a single payor obligation for the facilities and how this may be accomplished. [See suggestions below]

SPECIFIC ISSUES FOR CLARIFICATION

Policies and Procedures. The Ground Lease for the Orange Campus-Hub 1 Section 15.4 calls for Mind OC to provide the Chief Real Estate Officer with proposed policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and used required by this Lease. It is my understanding that our attorney, Jeff Singletary, has been in contact with your office and County Counsel regarding this issue. Until we received Your Letter, we prepared and were about to send over proposed Policies and Procedures. However, Your Letter proposes a dramatic change to the services and uses to which the Project may be used and asserts that HCA will be the provider of services not previously anticipated by any prior agreements. As a result, we request that your office or HCA provides Mind OC, as the landlord,

with its policies and procedures for overseeing what had been common areas of the Project over which Mind OC was to establish policies and procedures to accommodate its public private mandate to coordinate care. Mind OC can then respond with any supplemental policies and procedures and/or request modifications to those policies and procedures provided by HCA to coordinate with the operation of the Project.

<u>Specific Services Management Claims for Implementation at Be Well Orange Campus-Hub 1</u>. Attachment A to Your Letter:

- You refer to "services provided by the campus". Who is "the campus" that is providing such services? Is this in reference to Mind OC as the landlord or to HCA as a services provider given that each has a role to provide or coordinate care for members of the community presenting at this Campus, whether HCA Beneficiaries or Private Pay Beneficiaries?
- A number of "needs" are listed. Do you have an idea what specific spaces you wish to lease on behalf of the County to accommodate these needs or are you waiting for Mind OC to propose space for such proposed uses?
- Mind OC has its own phone numbers for the management of the Orange Campus-Hub 1 to coordinate care with the Irvine Campus-Hub 2 and for at least the Private Pay Beneficiaries and CalOptima beneficiaries for whom Mind OC has been given responsibility. If HCA wishes to establish a distinct phone number for the coordination of services to be provided to HCA Beneficiaries, the County will need to obtain its own phone number and/or Mind OC can assist coordinating its installation. Please advise if HCA needs assistance in this regard.
- As part of the policies and procedures needed from HCA, please have HCA provide specific guidelines how they propose to protect the PHI and PII of the Private Pay Beneficiaries who are not under the care of HCA.
- Please confirm if OC Links is capable of being used for Private Pay Beneficiaries or if Mind OC will need to establish and maintain a supplemental system to ensure that members of the community whose PHI or PII may not be stored will still be able to access care.
- Since the financial viability of the Project was based upon up to [26%] of the provider revenue coming from Private Pay Beneficiaries, and its corresponding step down on the cost based charges otherwise payable by the County for the care of the HCA Beneficiaries, please confirm that the County has a plan on how to make up for the lost revenue, as this impact not only the Orange Campus-Hub 1, but its coordinated care to be delivered through the Irvine Campus-Hub 2.

SUGGESTIONS

Create an Ongoing Joint County/HCA-Mind OC Committee. Rather than send letters to make requests or clarify responsibilities, we suggest a Joint Committee of the County/HCA and Mind OC to benefit from the strengths of each and to represent our different constituencies, i.e. the HCA Beneficiaries and County Funds as well as the Private Pay Beneficiaries and Private Stakeholder Funds.

- Let the Joint Committee work on policies and procedures that accommodate both payor classes and beneficiary groups.
- Let the Joint Committee identify, propose appropriate RFPs, and interview provider candidates to ensure that they can services both payor classes and beneficiary groups
- Let the Joint Committee on a real-time basis discuss issues that arise and to jointly formulate solutions vs. accusations.
- Let the Joint Committee review the operating and service reports to provide for the continuous improvement of this Project so that the community as a whole may be served.

The sooner you can respond to us with the clarification requested above, the quicker we can respond with what you are seeking. Alternatively, as suggested, we can quickly establish the proposed Joint Committee and jointly resolve any outstanding issues.

We look forward to your response, but not later than November 17, 2024.

Sincerely,

Phillip Franks, CEO

Philly Franks



Jeffrey M. Singletary
O 714.427.7473 | F 714.427.7799
jsingletary@swlaw.com

November 7, 2024

By Email Only - michael.haubert@coco.ocgov.com
Michael Haubert
Office of the County Counsel
County of Orange
400 W. Civic Center Drive, Suite 202
Santa Ana, CA 92701

Re: Mind OC / Information following October 31, 2024 Meeting

Dear Mr. Haubert,

I write to follow up on my October 30, 2024, letter and our October 31, 2024 meeting. As mentioned in the meeting, Mind OC was gathering and planned on producing additional information that the County had requested regarding the Ground Lease. I write to forward this additional information:

Exhibit 1: Operating expense detail for 2024; and

Exhibit 2: Floorplan detailing Mind OC's use of the premises.

It should be noted that Mind OC also planned on providing proposed policies and procedures relating to its front lobby staff and other permitted uses pertinent to the operation of the premises. However, Mind OC received a letter from the County on November 5, 2024, that proposed a dramatic change of services, and HCA's role in such services, that seems to require a further conversation between Mind OC and HCA regarding policies and procedures.

We trust that the information provided in this letter, along with the information that Mind OC provided in its 9-16-24, 10-4-24, and 10-20-24 letters, satisfactorily resolves the issues raised by the County in its September 26, 2024 Notice of Default. Mind OC strongly believes that there is no default of the Ground Lease and the evidence supports its position that the County approved the subleases, Mind OC acted reasonably and in good faith and pursuant to the terms of the Ground Lease, and its use of the premises is permitted. Please give me a call if you have any questions.

Very truly yours,

Snell & Wilmer

Jeffrey M. Singletary

4880-5904-8436

January - September 2024 MIND OC Operating Expenses (includes Property Taxes) 265 S Anita Dr, Orange, CA

Operating Expenses		Actual * 01/2024-09/2024		
CLEANING	3	01/2024-09/2024		
40-110	CLEAN - Dayporter	76,440.00		
40-220	CLEAN - Janitorial	176,688.72		
40-225	CLEAN - Non-Recurring Service	3,582.14		
40-320	CLEAN - Window Cleaning	6,537.00		
40-460	CLEAN - Supplies / Materials	26,877.26		
40-520	CLEAN - Trash Collection	7,484.04		
	TOTAL CLEANING	297,609.16		
REPAIRS/	MAINTENANCE			
41-100	R&M - On-Site Maintenance Engineer	66,644.18		
41-125	R&M - Non-Recurring Service	4,200.00		
41-190	R&M - Miscellaneous	25,735.86		
	TOTAL REPAIRS/MAINTENANCE	96,580.04		
ELEVATO	RS			
41-220	ELEV - Contract Service	5,595.57		
41-250	ELEV - Permits/Lic/Inspect/Test	1,710.23		
	TOTAL ELEVATORS	7,305.80		
HVAC				
41-320	HVAC - Contract Service	24,666.53		
41-325	HVAC - Non-Recurring Service R&M	39,681.98		
41-360	HVAC - Supplies / Materials	223.68		
	TOTAL HVAC	64,572.19		
ELECTRIC	CAL			
41-420	ELEC - Contract Service	1,369.04		
41-425	ELEC - Non-Recurring Service R&M	39,828.04		
41-440	ELEC - Tools / Equip (directly exp)	37.66		
41-450	ELEC - Permits / Inspect / Testing	1,650.00		
41-460	ELEC - Supplies / Materials	42.53		
41-461	ELEC - Bulbs / Lamps	994.71		
41-490	ELEC - Miscellaneous	55.32		
	TOTAL ELECTRICAL	43,977.30		
PLUMBIN	G			
41-620	PLMBG - Contract Service	8,172.50		
41-625	PLMBG - Non-Recurring Svc R&M	1,769.37		
41-660	PLMBG - Supplies / Materials	5,003.63		
	TOTAL PLUMBING	14,945.50		

FIRE & LIF	FE SAFETY	
41-720	FIRE - Contract Service	8,024.69
41-725	FIRE - Non-Recurring Service R&M	1,951.00
41-740	FIRE - Telephone	343.35
41-760	FIRE - Supplies / Materials	40.62
41-790	FIRE - Miscellaneous	467.82
	TOTAL FIRE & LIFE SAFETY	10,827.48
GENERAL	BUILDING R/M (Interior)	
41-820	BLDGI - Uniforms	434.56
41-825	BLDGI - Painting / Finishes (NC)	3,957.75
41-835	BLDGI - Supplies / Materials	5,711.50
41-840	BLDGI - Miscellaneous	4,221.05
41-847	BLDGI - Keys / Locks / Doors	7,317.30
	TOTAL GENERAL BUILDING R/M (Interior)	21,642.16
GENERAL	BUILDING R/M (Exterior)	
41-860	BLDGE - Painting / Finishes (NC)	14,494.37
41-867	BLDGE - Doors	1,795.00
	TOTAL GENERAL BUILDING R/M (Exterior)	16,289.37
UTILITIES	;	
42-100	UTIL - Electricity	148,875.07
42-200	UTIL - Gas	23,832.97
42-650	UTIL - Water & Sewer	8,847.10
	TOTAL UTILITIES	181,555.14
LANDSCA	NPING	
43-120	L/S - Contract Service	14,445.00
43-125	L/S - Non-Recurring Service R&M	15,301.18
	TOTAL LANDSCAPING	29,746.18
OTHER G	ROUNDS EXPENSES	
43-420	OTHER GRNDS - Pressure Washing	1,850.00
43-430	OTHER GRNDS - Prk Lot R&M	10,058.50
43-521	OTHER GRNDS - Pest Control	4,505.00
	TOTAL OTHER GROUNDS EXPENSES	16,413.50
SECURIT	Y	
44-220	SEC - 24/7/265 Security Guard	218,817.79
44-625	SEC - Non-Recurring Service R&M	785.00
44-640	SEC - Telephone	949.33
44-660	SEC - Supplies / Materials	400.00
	TOTAL SECURITY	220,952.12
		•

ADMINISTRATIVE

45-110	ADMIN - On-Site Property Manager	53,711.48	
45-310	ADMIN - Property Management Fee	126,000.00	
45-540	ADMIN - Teleph / Pagers / Internet	9,795.35	
45-565	ADMIN - Postage/Courier/Delivery	171.52	
45-614	ADMIN - Maintenance Van Reimb / Mileage	5,443.89	
	TOTAL ADMINISTRATIVE	195,122.24	
PARKING	OPERATIONS		
43-225	PRKG - Misc	3,837.32	
	TOTAL PARKING OPERATIONS	3,837.32	•
TAXES			
47-110	Real Estate Taxes	4,079.94	Invoices summarized below
	TOTAL TAXES	4,079.94	•
INSURANO	CE		
47-410	INSUR - Ground Lease Requirements	120,685.91	
	TOTAL INSURANCE	120,685.91	•
Total Op	perating Expenses before Mind OC Staffing	1,346,141.35	
Mind OC	Guest Services Coordinator	129 540 04	Includes base wage/salary plus 25% for benefits/taxes
Mind OC	Campus Operations Manager	•	Includes base wage/salary plus 25% for benefits/taxes
	Staffing		Per Section 5.2.4(vii)
	, otaning	•	1 Cl Geolion 3.2.4(vii)
Total Op	perating Expense	1,598,753.31	•
* Expenses	s reflect full occupancy of building, no gross up required.		
Jan - Sept	2024 Property Taxes:		
Parcel 232	-041-02 2023/24 2nd Installment	8,721.96	
Parcel 232	-041-02 2023/24 2nd Installment - OC Sanitation Refund	(8,721.96)	
	-069-69 2023/24 2nd Installment	·	Includes welfare exemption
	3-069-69 2023/24 2nd Installment - OC Sanitation Refund	(6,970.07)	
Accrue 988	3-069-69 2024/25 1st Installment (for 3 months)		Includes welfare exemption
		4,079.94	

Legend

CSU – Adolescent

Exodus Recovery Inc.
1,899 USF

SUD (Sobering)
TBD
2,044 USF

CSU - Adult
Exodus Recovery Inc.
1,934 USF

CSU Support Areas
Exodus Recovery Inc.
3,163 USF

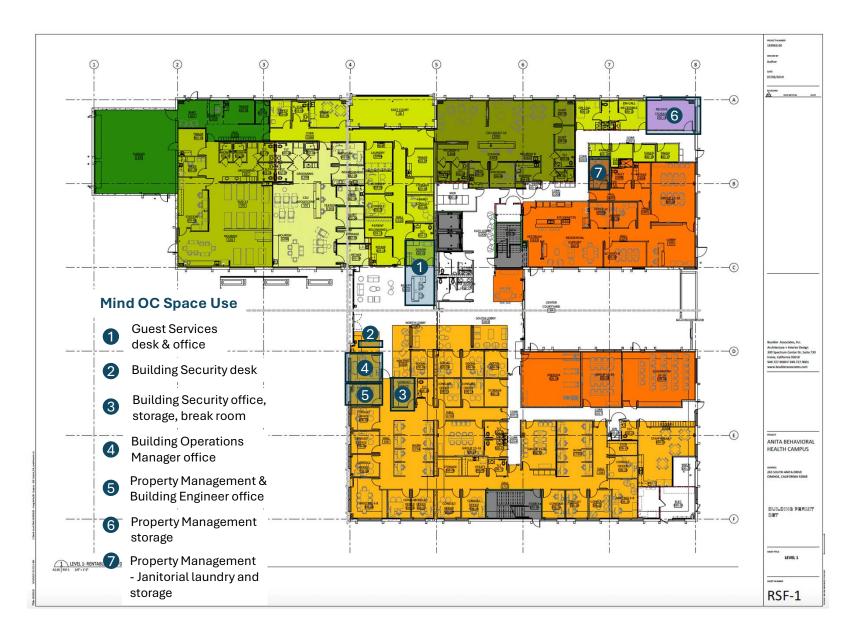
CSU & SUD Shared Triage Exodus Recovery Inc. 1,730 USF

Floor Amenity Area
Property Management
248 USF

Shared Residential (Classrooms, meeting spaces, kitchen, gym) Exodus, HR360 4,281 USF

Wellness / Social Services Exodus, HR360, Mind OC 7,023 USF

Lobby & Circulation 4,268 USF



Legend

Crisis Residential

Exodus Recovery Inc.
8,046 USF

Co-occurring Residential
HealthRight360
9,699 USF

Lobby & Circulation 722 USF



Legend

Withdrawal Management
HealthRight360
6,728 USF

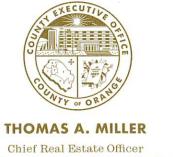
Substance Use Residential
HealthRight360
8,304 USF

Lobby & Circulation 571 USF



Exhibit 13





Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701

November 15, 2024

VIA EMAIL and U.S. MAIL

Phillip Franks, CEO Mind OC 18600 MacArthur Blvd., Suite 350 Irvine, CA 92612 phillip.franks@mind-oc.org

SUBJECT:

Response to Letter Regarding County Service Coordination and Clinical Oversight Plan, 265 South Anita Drive and Notice Regarding Ongoing Ground Lease Default

Greetings,

The County of Orange ("County") is in receipt of your undated letter (Exhibit 1), received on November 7, 2024, and sent in response to the County's letter dated November 5, 2024 (Exhibit 2) regarding the County's efforts to institute an appropriate service delivery structure for the Be Well Orange facility. As you are aware, the County has been reviewing the services being delivered on-site, as well as certain compliance issues related to the Ground Lease, dated June 17, 2019 ("Ground Lease") between the County and Mind OC for the property located at 265 South Anita Drive in the City of Orange ("Premises"), which is leased to Mind OC for the purposes of constructing and operating "a Be Well OC Behavioral Health Services Campus" ("Project"). The purpose of this letter is to reply to certain allegations in your letter, as well as identifying ongoing defaults under the Ground Lease, which need to be cured. Due to the fact that this is a public health facility staffed by County Health Care Agency ("HCA") service providers, and fully funded by the County, it is imperative that the default be remedied by November 26, 2024, to prevent further action by the County.

⁻

¹ For reference purposes, and in response to the question in your letter, any references to the Project, or the Orange Campus refer to the operation of the Premises as a whole, and depending on the reference may refer to the services or the operation of the facility, as the case may be. However, as detailed in this letter, since all services onsite, regardless of whether they are provided to "Privately Funded Beneficiaries," or otherwise, are provided by County service providers, there is no need to distinguish between these clients. We are aware of no clients who are *not* under the care of HCA or their service providers.

Your Letter Received on November 7, 2024.

Your letter makes certain unsubstantiated allegations and demands certain information from the County in support of those allegations. Initially, some incorrect claims asserted in your letter need to be corrected and clarified:

- A. Citations to County Agenda Staff Reports. Your letter cites to Agenda Staff Reports ("ASR") submitted to the County Board of Supervisors ("Board") seemingly to infer that this language is binding upon the County and Mind OC. For your information, ASRs have various sections, most of which are meant to provide background on the specific actions that the Board takes under consideration. These actions themselves are found in the "Recommended Actions" section of the ASR, and once the Board takes any such action, the Board's decisions are memorialized in a Minute Order generated by the County's Clerk of the Board. Anything outside of the Recommended Actions that are subsequently memorialized in a Minute Order are simply background information that represents County staff's understanding on the date the ASR was drafted, and do not bind the County or Mind OC going forward. In particular, you cite to ASRs from June 11, 2019, and May 7, 2024, which respectively took the following actions: (1) on June 11, 2019 the Board approved a resolution, option and lease for Mind OC to lease the Premises "for entitlement, construction, operation, maintenance and management of Be Well OC Behavioral Health Hub," and; (2) on May 7, 2024, the Board approved a Master Service Agreement ("MSA") for the Irvine Campus and the amendment to an MSA at the Orange Campus, which has since been terminated. The Board took no other binding actions on those dates. Any and all responsibilities that Mind OC has with respect to the Be Well Campuses would either be found in the Ground Lease for the Orange Campus, or in the option and ground lease and MSA for the Irvine Campus, and no background discussion from an ASR would alter those documents or the understanding of the parties found therein. The Ground Lease for the Orange Campus does not authorize Mind OC to be a healthcare provider. Based on this, Mind OC is neither a provider nor a coordinator of care at the Orange Campus. As such, this letter confirms that Mind OC has no "continuing service role on the Orange Campus-Hub 1[.]"
- B. Allegations Regarding Revenues for Costs at Orange Campus. In your letter, you indicate that "it was anticipated that private pay patients and their payors would account for an anticipated 26% percent of the total revenue" at the Orange Campus. You use this in apparent support for your unstated inference that Mind OC is somehow required to coordinate the lobby intake process and the healthcare services at the Orange Campus. This, however, is not supported by the Ground Lease or any other binding agreement between the parties. While the County recognizes that this private pay revenue was the "anticipated" plan under the MSA, which has since been terminated, the potential revenue from "Privately Funded Beneficiaries" has never come to fruition, and the County understands that only about 2% of the revenues from the Orange Campus come from "private pay patients and their payors". Additionally, privately insured clients are all seen by the County's service providers on the campus. Contrary to the allegation in your letter,



the County's service providers do see and provide services to these clients, so any potential revenues from "Private Pay Beneficiaries" will be captured through the current services onsite. There are no other services provided on-site, and therefore *all services* are provided by the County service providers. Mind OC is not a service provider and has no treatment relationship with private pay clients, therefore they should have no access to personal health information ("PHI") for these clients. This supports the County's request in our November 5, 2024, letter that the services on-site be coordinated through HCA staff. Based on these facts, this letter again confirms that Mind OC *has no* "continuing service role on the Orange Campus-Hub 1[.]"

- C. Policies and Procedures for Operation of the Orange Campus. Your letter also demands that the County provide its policies and procedures for client intake and processing at the Orange Campus, which you assert to be Mind OC's right "as the landlord." However, as the landlord and operator of the facility itself, Mind OC does not have any independent right to demand these documents. HCA has numerous facilities throughout the County that are operated by private third parties who have no role in the provision of services at those locations; they are merely landlords or facility owners. So, while HCA has, or will develop, specific policies and procedures for client intake and service coordination, including the handling of PHI, Mind OC has no particular right to them, or need to inspect them. However, as addressed below in the section of this letter on Continuing Default, the County has still not received Mind OC's "policies and procedures pertinent to the operation of the Project[.]"
- D. Ongoing Joint County/HCA-Mind OC Committee. Based upon the current services being provided onsite and the fact that the MSA for the Project is no longer in effect, this sort of committee is not appropriate at this time. County/HCA executive management and Board of Supervisor members are willing to meet with Mind OC executive management and board members to discuss the operation of the Project and the required operational changes set forth in our November 5, 2024, letter.

We hope that the above clarifies the issues highlighted in our November 5, 2024, letter and your subsequent response. The County again reiterates that the service coordination and clinical oversight plan set forth in our letter is the most appropriate for this facility and needs to be instituted in the next ten (10) days, no later than November 26, 2024. The HCA staffing needs and offices required onsite are provided in our November 5, 2024, letter (Exhibit 2). If this structure is not instituted, this could also represent a default under the Ground Lease. While an Ongoing Joint Committee does not appear to be necessary, as stated above, the County is available to meet and discuss coordination of this plan.

Continuing Defaults under the Ground Lease.

As you are aware, the County, through letters on September 6th, September 26th and October 25th, has notified Mind OC of potential defaults under the Ground Lease. While Mind OC has provided various documents in response to these letters, there are still outstanding issues that



need to be addressed, in particular related to the Subleases entered into by Mind OC without County approval.²

As previously documented in the October 25, 2024, letter from County Counsel (<u>Exhibit 3</u>), these Subleases were not approved in advance in accordance with the Ground Lease, which remains an uncured default. Specifically, after review there appears to be significant issues with the rent and expenses being charged to the sublessees, who are all County-supported service providers who pass on their costs to the County.³ Pursuant to Section 1.6 of the previously referred Subleases, the sublessees are charged a "Base Rent' starting at \$3.01 per square foot for their subleased premises. In addition, Section 5.2.2 of the Subleases provides that the sublessees are also required to pay a proportionate share of the "Direct Expenses" for the Premises.

We are in receipt of Mind OC's statement of Direct Expenses for the 2023 calendar year, as well as a portion of the 2024 calendar year. The Ground Lease provides that "the County [would] be party to multiple contracts for services through the Lease term...sufficient to occupy the entirety of the rentable services space...[to cover]...the costs [for] the responsibilities of [Mind OC] herein." Based on our review, it appears clear that with the combination of Base Rent and Direct Expenses, Mind OC is passing on costs to the sublessees, and therefore the County, far in excess of Mind OC's costs to operate the Project. Assuming for the moment that Mind OC's costs to operate the facility are reasonable, these costs (\$1,873,763.34)⁵ are completely satisfied by the Direct Expense charge of approximately \$2.74 per BSF/month being sought by Mind OC in their current Subleases, which results in annual sum of \$1,884,122.64 being charged by Mind OC. Despite Mind OC's reported costs being covered by this Direct Expense charge, Mind OC also charges \$3.01 per BSF/month to the sublessees, for an additional annual sum in excess of \$2 million. This combination of Base Rent and Direct Expense reimbursement appears to be well in excess of, and possibly more than double, Mind OC's attempt to recover its "costs [for] the responsibility of [Mind OC]."

Since the Direct Expenses appear to cover all of Mind OC's operating expense, Mind OC is charging the sublessees far more than permitted under the Ground Lease. In addition, it seems that certain direct staff costs are being passed on that do not appear to be related to the facility operation. For example, the Direct Expenses include full reimbursement for a Guest Services Coordinator, Campus Operations Manager, On-Site Property Manager, On-Site Maintenance Engineer, and a Property Management Fee of \$168,000.6 The costs for all of these staff members and management fee amounts to \$644,517.37 per year, which is also excessive.

⁶ Since the full cost of the staff is being passed on, it is also not clear why there is an additional Property Management Fee being charged.



² In addition, the County still has not received the policies and procedures that are required under Section 15.4 of the Ground Lease.

³ Thus, all of their costs are passed on to the County through their service agreements.

⁴ The County also has concerns over the excessive amount of staffing being provided by Mind OC to manage this 57,000 sf building.

⁵ This figure represents the 2023 Mind OC "grossed up" operating expenses of \$2,105,178 less the \$231,414.66 property taxes.

Based on our review, the County demands that Mind OC reduce the Base Rent and Direct Expenses to an amount that takes into consideration its building management role. It appears that the Direct Expense charge (\$2.74 per BSF) alone is sufficient to cover all of Mind OC's costs. In addition, based on information provided in response to our letters, Mind OC appears to be occupying at least five separate office spaces. A building manager does not need to occupy such a large amount of space, which should be reallocated to HCA staff necessary to manage the services onsite.

The above-mentioned excessive rent charge to sublessees, along with the fact that the Subleases have not been approved by the County (and cannot as currently drafted), represents an ongoing default under the Ground Lease. Based on this, Mind OC is being provided notice pursuant to Section 11.1.3 of the Ground Lease that this default must be cured within ten (10) days of this letter, and no later than November 26, 2024. In the event that this default, and any other unaddressed default set forth in the prior County letters, is not cured within this time period, the County will exercise any and all available remedies, including potential termination of the Ground Lease. As you are well aware, this public health facility provides vital services to the Orange County public, and it is imperative that the County is able to ensure that these services continue with HCA oversight and that the County, through its service providers, is not being overcharged for occupancy of the premises, which based on the above is the case presently.

We look forward to your anticipated cooperation.

Regards,

Thomas A. Miller

Chief Real Estate Officer

Encl

cc:

Michelle Aguirre, Interim CEO, County of Orange
Dr. Veronica Kelley, Director, HCA, County of Orange
Leon Page, County Counsel
Richard Afable, Board Member, Mind OC
Mark E. Costa, Board Member, Mind OC
Marcia Manker, Board Member, Mind OC
Rabbi Richard Steinberg, Board Member, Mind OC
Bill Taormina, Board Member, Mind OC
Ali Santore, Board Member, Mind OC
Steve Pitman, Mind OC
Michael Haubert, Senior Deputy County Counsel
Jeff Singletary, Snell & Wilmer



Exhibit 1 Undated Mind OC Letter Received on November 7, 2024

[attached]





Via Email and U.S. Mail

Thomas A. Miller Chief Real Estate Officer 400 West Civic Center Drive, 5th Floor Santa Ana, CA 92701 thomas.miller@ocgov.com

SUBJECT: Response to Your Letter of November 5, 2024

Be Well Orange Campus Hub 1

Greetings,

We wanted to get back to you as quickly as possible to your letter of November 5, 2024 ("Your Letter") to make sure we are on the same page and can implement what may be required for the Be Well Orange Campus Hub 1 ("Orange Campus-Hub 1"). To properly respond, we need to clarify and/or confirm certain premises upon which Your Letter was based.

PREMISES: CLARIFICATION

1. The Orange Campus-Hub 1 was financed in substantial part with private funds. See Agenda Staff Report of 6/11/19 on which the Orange Campus-Hub 1 Ground Lease was authorized, i.e. "designed to demonstrate the feasibility of a new public and private payment model".

"The HCA program planning process for the Wellness Campus evolved in conjunction with the creation of Be Well OC. Be Well OC is a coalition of behavioral health stakeholders, both in the private and public sectors, including CalOptima, hospitals (Hoag, Providence St. Joseph Health and Kaiser Permanente, collectively, Hospitals), non-profit, academic and faith-based organizations. The goal of Be Well OC is to establish a coordinated, Countywide behavioral health services system including the establishment of regional wellness hubs, such as the Wellness Campus envisioned for this Property. By collaborating with Be Well OC, an opportunity emerged for a public-private partnership between HCA and Mind OC."

Mind OC has a service role at the Orange Campus-Hub 1 to coordinate the countywide behavioral health care proposed and supported through both public and private grant funds, and in particular the Be Well Hub 1 campus at Orange and the Hub 2 campus being built in Irvine.

2. Pursuant to the funding for this public private partnership, it was anticipated that private pay patients and their payors would account for an anticipated 26% of the total revenue, resulting in a step down benefit and offset to the costs otherwise incurred by the County in payment for HCA specific beneficiaries, i.e. Medi-Cal and indigent patient ("HCA Beneficiaries") processed through HCA's through its "OC Links" system, which is currently unable to accommodate private insurance beneficiaries ("Privately Funded Beneficiaries") seeking these same behavioral health services intended to be provided as a "community" asset.

3. Mind OC retains the responsibility not necessarily as a "provider" of behavioral health services, but to provide coordination of care for all the parties intended to be served by this public private funded community asset, i.e. both HCA Beneficiaries and Privately Funded Beneficiaries, whether performed at the Orange Campus-Hub 1 or Irvine Campus-Hub 2. See the same Agenda Staff Report above:

MIND OC is a 501(e)(3) created to support the advancement of Be Well OC and the OC behavioral health system of care. The MIND OC governance board is comprised of a cross-sector, multidisciplinary team of OC leaders. MIND OC has three primary areas of focus: 1) mental health and wellness infrastructure development, 2) value optimization and transparency in mental health and substance use disorder services and 3) Be Well OC sustainability and public/private partnerships. The First Amendment to the Agreement with MIND OC for the design and construction of the Be Well OC Behavioral Health Services campus allows for the pass through of the CalOptima financial commitment.

As noted, Mind OC was not only appointed to coordinate the services to be provided to the Privately Funded Beneficiaries but also as an express designee of CalOptima to support its beneficiaries.

As noted more recently noted in the Supplemental Agenda Staff Report of May 7, 2024, Mind OC was intended to oversee "a wide range of critical and comprehensive behavioral health services to County residents at two centralized locations" and further noting that the Mind OC established relationship with relevant stakeholders are uniquely important and necessary experiences to oversee the behavioral health services portion. "No other provider in Orange County has this combination of experience."

QUESTION: Has the Board of Supervisors requested and received any later Agenda Staff Reports or taken any action as a Board that would change this understanding, addressing the duty owed to the private stakeholders? If so, please provide that report so that Mind OC is not accused of abandoning its responsibilities to the private stakeholders and CalOptima based upon the requests made in Your Letter, or confirm that Mind OC has a continuing service role on the Orange Campus-Hub 1 to pursue the interests of the private stakeholder in coordination with HCA to help offset the costs to the County of a single payor obligation for the facilities and how this may be accomplished. [See suggestions below]

SPECIFIC ISSUES FOR CLARIFICATION

Policies and Procedures. The Ground Lease for the Orange Campus-Hub 1 Section 15.4 calls for Mind OC to provide the Chief Real Estate Officer with proposed policies and procedures pertinent to the operation of the Project and manner of providing the permitted services and used required by this Lease. It is my understanding that our attorney, Jeff Singletary, has been in contact with your office and County Counsel regarding this issue. Until we received Your Letter, we prepared and were about to send over proposed Policies and Procedures. However, Your Letter proposes a dramatic change to the services and uses to which the Project may be used and asserts that HCA will be the provider of services not previously anticipated by any prior agreements. As a result, we request that your office or HCA provides Mind OC, as the landlord,

with its policies and procedures for overseeing what had been common areas of the Project over which Mind OC was to establish policies and procedures to accommodate its public private mandate to coordinate care. Mind OC can then respond with any supplemental policies and procedures and/or request modifications to those policies and procedures provided by HCA to coordinate with the operation of the Project.

Specific Services Management Claims for Implementation at Be Well Orange Campus-Hub 1. Attachment A to Your Letter:

- You refer to "services provided by the campus". Who is "the campus" that is providing such services? Is this in reference to Mind OC as the landlord or to HCA as a services provider given that each has a role to provide or coordinate care for members of the community presenting at this Campus, whether HCA Beneficiaries or Private Pay Beneficiaries?
- A number of "needs" are listed. Do you have an idea what specific spaces you wish to lease on behalf of the County to accommodate these needs or are you waiting for Mind OC to propose space for such proposed uses?
- Mind OC has its own phone numbers for the management of the Orange Campus-Hub 1 to coordinate care with the Irvine Campus-Hub 2 and for at least the Private Pay Beneficiaries and CalOptima beneficiaries for whom Mind OC has been given responsibility. If HCA wishes to establish a distinct phone number for the coordination of services to be provided to HCA Beneficiaries, the County will need to obtain its own phone number and/or Mind OC can assist coordinating its installation. Please advise if HCA needs assistance in this regard.
- As part of the policies and procedures needed from HCA, please have HCA provide specific guidelines how they propose to protect the PHI and PII of the Private Pay Beneficiaries who are not under the care of HCA.
- Please confirm if OC Links is capable of being used for Private Pay Beneficiaries or if Mind OC will need to establish and maintain a supplemental system to ensure that members of the community whose PHI or PII may not be stored will still be able to access care.
- Since the financial viability of the Project was based upon up to [26%] of the provider revenue coming from Private Pay Beneficiaries, and its corresponding step down on the cost based charges otherwise payable by the County for the care of the HCA Beneficiaries, please confirm that the County has a plan on how to make up for the lost revenue, as this impact not only the Orange Campus-Hub 1, but its coordinated care to be delivered through the Irvine Campus-Hub 2.

SUGGESTIONS

Create an Ongoing Joint County/HCA-Mind OC Committee. Rather than send letters to make requests or clarify responsibilities, we suggest a Joint Committee of the County/HCA and Mind OC to benefit from the strengths of each and to represent our different constituencies, i.e. the HCA Beneficiaries and County Funds as well as the Private Pay Beneficiaries and Private Stakeholder Funds.

- Let the Joint Committee work on policies and procedures that accommodate both payor classes and beneficiary groups.
- Let the Joint Committee identify, propose appropriate RFPs, and interview provider candidates to ensure that they can services both payor classes and beneficiary groups
- Let the Joint Committee on a real-time basis discuss issues that arise and to jointly formulate solutions vs. accusations.
- Let the Joint Committee review the operating and service reports to provide for the continuous improvement of this Project so that the community as a whole may be served.

The sooner you can respond to us with the clarification requested above, the quicker we can respond with what you are seeking. Alternatively, as suggested, we can quickly establish the proposed Joint Committee and jointly resolve any outstanding issues.

We look forward to your response, but not later than November 17, 2024.

Sincerely,

Phillip Franks, CEO

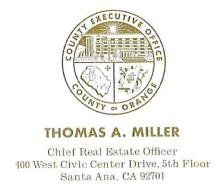
Phillips Franks

Exhibit 2 County Letter, Dated November 5, 2024

[attached]







November 5, 2024

VIA EMAIL and U.S. MAIL

Phillip Franks, CEO Mind OC 18600 MacArthur Blvd., Suite 350 Irvine, CA 92612 phillip.franks@mind-oc.org

SUBJECT: County Service Coordination and Clinical Oversight Plan, 265 South Anita Drive

Greetings,

Initially we want to thank you for your cooperation as we coordinate an appropriate service delivery structure for the Be Well Orange facility. As you are aware, Mind OC leases the property located at 265 South Anita Drive in the City of Orange ("Premises") from the County of Orange ("County") pursuant to that certain Ground Lease, dated June 17, 2019 ("Ground Lease") for the purposes of constructing and operating "a Be Well OC Behavioral Health Services Campus" ("Project"). In addition to reviewing the service delivery operations at the campus, we have also been working with you on certain Ground Lease compliance issues. We are in receipt of your attorney's letter dated October 30, 2024, transmitting additional information and will be following up on those matters soon. We also understand that there will be additional information forthcoming from Mind OC later this week.

As you are aware, the Ground Lease for the Project was entered into "for the purposes of designing and constructing a wellness hub." In addition, it was contemplated that "the County [would] be party to multiple contracts for services through the Lease term...sufficient to occupy the entirety of the rentable services space...[to cover]...the costs [for] the responsibilities of [Mind OC] herein." After the construction of the Project, Mind OC's role under the Ground Lease was the property management of the Project.

Pursuant to the terms of the Lease, the County has entered into service contracts with service providers for the majority of the rentable space at the Project. As we have reviewed the providers on-site along with the various services being delivered, the County has identified a need for changes in the operational structure for the services provided. As Mind OC is not a service provider and per the Lease has no responsibility for the provision of services, this will necessitate

County Health Care Agency ("HCA") staff to be stationed on-site to coordinate the intake process and the services, as well as to provide linkage to off-site services. The Project is a behavioral health facility supported by public funds and needs to be operated consistent with other County supported public health facilities within Orange County. Attached hereto as Attachment A is the County's plan for service coordination and clinical oversight.

We understand that HCA occupancy of space within the Project will necessitate a Sublease to be executed with Mind OC and we look forward to discussing this matter. Moving forward, the County is pleased to meet and discuss this plan and the process to facilitate this plan as soon as possible. However, in any event this needs to occur on or before November 15, 2024.

We look forward to your anticipated cooperation.

Regards,

Thomas A. Miller

Chief Real Estate Officer

hom A Mills

Encl

CC:

Michelle Aguirre, Interim CEO, County of Orange Dr. Veronica Kelley, Director, HCA, County of Orange Richard Afable, Board Member, Mind OC Mark E. Costa, Board Member, Mind OC Marcia Manker, Board Member, Mind OC Rabbi Richard Steinberg, Board Member, Mind OC Bill Taormina, Board Member, Mind OC Ali Santore, Board Member, Mind OC Steve Pitman, Mind OC Michael Haubert, Senior Deputy County Counsel Jeff Singletary, Snell & Wilmer



Attachment A Be Well Orange Services Management

At the Campus in Orange the treatment of clients coming through the campus can happen in several areas. Often clients call the campus for services, come in for services, or need help navigating to future treatment when they leave. In order to ensure clients are receiving the best care possible in all these situations Health Care Agency (HCA) employees will need to have an onsite presence to provide treatment and ensure clients get to the most appropriate level of service for them as quickly as possible, and to ensure the proper handling of protected health information. This may be one of the services provided by the campus or it may not, and the on-site HCA team will need to assess clients quickly to determine this. In order to accomplish this goal and properly run the services for the entire campus, the HCA team will need the following:

- 1. Two (2) offices for the administrative management of the property to provide oversight and clinical direction over HCA on-site services and to coordinate on a day-to-day basis with providers at the campus.
- 2. HCA will need to have access and a presence in the lobby and wellness/social services area to provide client care in these areas and ensure proper handling of clinical records being stored.
- 3. HCA Team will have two (2) staff located at front desk to direct client flow for the campus and ensure proper handling of protected health information.
- 4. HCA Team will need two (2) offices for Outreach and Engagement staff stationed at the campus to act as clinical leads, providing necessary screening to direct clients to appropriate services.
- 5. HCA Team will need two (2) offices for peer support staff to work directly with clients in linking to services and providing de-escalation and care navigation services.
- 6. HCA Team will need an office for one (1) staff from the ART Team on site to do initial assessments for SUD Residential Treatment.
- 7. HCA Team will have two (2) contract support clinicians on-site stationed with the two contract providers (HR360 and Exodus) to provide technical assistance and support to the providers as needed, including on regulations applicable to the handling of protected health information.
- 8. HCA Team will need an office for (1) eligibility technician on campus who can help clients apply for Medi-Cal if they do not already have it.
- 9. All outward facing communication by Mind OC related to the Orange campus should only address building operations and facility management.
- 10. Phone numbers that have been advertised as numbers to call for service or information on services will need to be answered by HCA staff. There should be a separate phone line for facility maintenance issues that Mind OC will answer.
- 11. Mind OC employees should only occupy areas where there is no treatment of clients occurring and there are no clinical records of clients present.



Exhibit 3 County Counsel Letter, Dated October 25, 2024

[attached]





OFFICE OF THE COUNTY COUNSEL COUNTY OF ORANGE

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October 25, 2024

Jeffrey M. Singletary Snell & Wilmer 600 Anton Blvd., Suite 1400 Costa Mesa, CA 92626 Email: singletary@swlaw.com

Re: Response to Mind OC's October 4, 2024 Letter

Dear Mr. Singletary:

The County is in receipt of your letter dated October 4, 2024, in response to the County's Notice of Default sent on September 26, 2024 ("Notice"). The County disagrees with your client's positions on the various issues set forth in the County's Notice. Nevertheless, the County welcomes the opportunity to discuss the possibility of an amicable resolution to the issues raised by the County if the parties can indeed move forward "with a clearer understanding...on compliance" with the Lease.

The County deems it necessary to explain where it deviates from your client's opinion on the matters raised in the Notice, as outlined below.

The County Never Approved the Subleases Previously Executed by Mind OC

The County has not approved any Subleases and denies the example provided in your October 4 letter is evidence of the Chief Real Estate Officer's approval. First, review and approval of all form Subleases was supposed to have taken place *prior* to the Subleases taking effect. No form Subleases were received by the Chief Real Estate Officer until Phillip Franks delivered hard copies of the Subleases to the Chief Real Estate Officer on September 9, 2024, as well as proposed amendments to the Subleases. On that date, Mr. Franks was told that the County would need to review the Subleases and would get back to Mind OC with any questions or issues. At no time, on that date, or any other, did the Chief Real Estate Officer approve the Subleases. We are still unable to do so, as all of the requested information for the County's full review has not been delivered.

Your letter indicates that the County Chief Real Estate Officer requested that the amendments to the Subleases delivered by Phillip Franks be signed by the Subtenants and this is

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evidence of approval. While the County did approve going forward with execution of the amendments to ensure that the facility remained in operation, the assertion that this signified approval on the underlying Subleases is inaccurate. As Mr. Franks knows from discussions with both the Chief Real Estate Officer and the Deputy Chief Real Estate Officer, allowing Mind OC to move forward with the amendments to these with Subleases was just an accommodation to keep services running at the Anita facility while the review of the Subleases and supporting documentation was ongoing. As detailed below, Mind OC still has not provided information to the County sufficient to permit it to properly approve these Subleases. As such, the Subleases remain unapproved by the County as the process required by the Lease terms has not been followed by Mind OC, and, as outlined below, the County lacks the necessary information to provide such approval at this time.

Mind OC's Interpretation and Practice for Rental Fees in the Subleases is Not Supported by the Lease

Mind OC applies an artificial and self-serving interpretation to the rental fees that can be charged in the Subleases by inserting "at least" into its reading of the Lease language, as summed up in the October 4 letter: "[T]he rent from subleases will at least 'in the aggregate', cover the costs of the building and responsibilities of Mind OC as the tenant." As a result, your client's rather bold and unreasonable position is that the Lease "in no way limits rents to be collected by Mind OC[]" because "[t]his is a floor and not a ceiling on rents to be collected from subtenants." By this rationale, Mind OC can charge whatever amount it so desires; yet, Mind OC expects the County to act "reasonably" when the County enters into contracts with service providers whose payments fund the Subleases. The bottom line on this point is: All parties to a contract are bound to reasonableness and the County merely expects Mind OC to be so bound when establishing a Sublease's rental fee. The October 4 letter mentions Mind OC charging "market rents" without citing any justification from the Lease or otherwise for Mind OC's Sublease rent calculation, nor any evidence that the total Sublease fees (including base rent and Direct Expense reimbursement) are in fact within market. However, the County has not been provided sufficient information by Mind OC that would allow for the County to determine if the total Sublease fees are in fact within market or are sufficient "to cover the costs of the building and the responsibilities of Tenant herein," as required by the Lease.

To enable the County to perform an evaluation, the County requires detailed line-item information about Mind OC's expenses for operations, tax expenditures, and any other costs owed by Mind OC per the Lease. For clarity on this request, the Subleases provided by Mind OC define certain "Direct Expenses" that are passed on the sublessee pursuant to Section 5.2.2 of the Subleases. The County needs a full accounting of these Direct Expenses at least for the last available calendar year (2023). This should include all costs and expenses related to Mind OC's management and operation of the facility. Additionally, the County requires detailed information about all revenue sources for Mind OC for the 2023 calendar year. To date, Mind OC has only

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provided a summary one-page Operating Expense accounting that is woefully inadequate for this purpose. Moreover, the County also needs to know Mind OC's projections for capital improvements since that will relate to future costs and expenses for the facility.

The County looks forward to discussing these issues and having Mind OC provide an explanation of how it derived the Sublease rental rates and how they are "market rates," with the inclusion of the reimbursement of Direct Expenses under the Subleases.

Mind OC's Use of the Premises Have Not Been Clearly Communicated Nor Approved

The County takes exception with your client's claim that it "responded in writing to each demand for information and timely delivered all information sought." Detailed information on Mind OC's occupation of the Premises for its own uses have not been provided to the County. The County still does not know what areas are used by Mind OC, how much square footage is being used, and for what specific purposes. Moreover, Mind OC has not provided detailed policies and procedures for the client check-in process or activities performed by Mind OC's lobby staff for such purposes. Without such information, the County cannot verify if Mind OC is in compliance with the Lease terms. In addition, the County needs to verify that any laws applicable to the handling of protected health information are being adhered to with respect to the lobby and check-in procedures. Keep in mind that this is a County funded health care facility and it is imperative that the County have complete knowledge on the operation of the facility and the services being provided therein.

Further, it remains unclear whether any third parties—that is, parties other than Mind OC or a County service provider—have been using and/or continue to use the Premises. For example, the County has been approached recently by Mind OC to host a meeting with what appears to be a pre-existing and ongoing use of the Premises by the Orange County chapter of the National Alliance on Mental Illness. This use was never tendered to the County for review and approval. The County continues to request that Mind OC disclose all details surrounding all uses by any parties whatsoever at the Premises, whether these are Additional Services, Ancillary Services and Uses, etc.

Mind OC is limited to operating and maintaining the Premises. See Section 4.1 of the Lease. County service providers are intended to occupy the entirety of the rentable area of the Premises through approved Subleases. Any uses beyond those provided by the County service

¹ Mind OC just recently disclosed a proposed City Managers and Police Chiefs Meeting, and a recurring SUD Alumni Support Meeting. The County cannot properly assess these uses without Mind OC providing the information previously requested by the County regarding how the use of the conference rooms complies with the Permitted Uses in the Lease.

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providers are to be reviewed and approved by the County. This is an issue that will require the parties to sort through and resolve if the Lease is to continue.

The County Acknowledges Mind OC Cured its Delinquent Status, but Took over 2 Years to do So

Until recently, Mind OC has been delinquent with its charitable organization status since 2022, according to the state Attorney General's online information. The County has confirmed that Mind OC is no longer "Delinquent" as a charitable organization with the state Attorney General's Office and considers this issue to be cured. The County reminds Mind OC that failure to stay in good standing with its charitable organization status could result in holding Mind OC in default of the Lease.

Conclusion

At the outset of this letter, the County stated its interest in discussing and resolving the issues related to the Lease. To that end, the County would like to schedule a meeting that includes all necessary Mind OC representatives. Please let us know your and your client's availability during the week of October 28, 2024, so a meeting can be arranged. We would appreciate receipt of the above requested information prior to the meeting.

The County looks forward to working with you to ensure that the Be Well Orange campus functions in compliance with the Lease and all applicable laws.

Very truly yours,

LEON J. PAGE COUNTY COUNSEL

MICHAEL A. HAUBERT

By Michael A. Hawhort

cc: Michelle Aguirre, Interim CEO & CFO, County of Orange

Dr. Veronica Kelley, Director, HCA

Thomas (Mat) Miller, Chief Real Estate Officer, CEO Real Estate