

## AGREEMENT FOR SERVICES OF CONTRACTOR ON PAYROLL

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and Nubia Swain, M.D., with a principal place of business at Nipomo (hereafter Contractor) wherein Contractor agrees to provide and County agrees to accept the services specified herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Assistant Director Administration at phone number (805) 681-5220 is the representative of County and will administer this Agreement for and on behalf of County. Nubia Swain, M.D., at phone number 8059051793 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, delivered as follows:

To County:                     Director  
                                      Santa Barbara County  
                                      Alcohol, Drug, and Mental Health Services  
                                      300 N. San Antonio Road, Bldg. 3  
                                      Santa Barbara, CA 93110

To Contractor:               Nubia Swain, M.D.  
                                      1055 Zinnia Ct.  
                                      Nipomo, CA 93444

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** Contractor agrees to provide services to County in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** Contractor shall commence performance on 10/6/2008 and end performance upon completion, but no later than 6/30/2009 unless otherwise directed by County or unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. The maximum payment under this Agreement shall not be exceeded without a written notice from County.

6. **CONTRACTOR ON PAYROLL STATUS.** Contractor understands and agrees that Contractor's term of work is governed solely by this Agreement; and that no right of tenure is created hereby; and that he/she does not and will not, by virtue of this Agreement, hold a position in any department or office of the County; and that Contractor's services to the County under this Agreement are authorized pursuant to Government Code Section 31000. To the extent that this Agreement can be construed as an agreement of employment, such employment is at-will, and it shall remain at-will unless and until the parties expressly state their intention to make it otherwise, in writing signed by the Contractor and a duly-authorized representative of the County. Contractor warrants that Contractor is

fully licensed to perform all work contemplated in this Agreement, and Contractor agrees to submit verification of licensure.

7. **BENEFITS.**

A. **Standard benefits:** County shall pay the following costs: Employer's share of either Social Security (aka FICA) or the Social Security Alternative Plan (aka SSAP); employer's share of federal Medicare health insurance; County workers' compensation insurance; State unemployment insurance; and travel expense reimbursement for mileage claims with prior written authorization.

B. **Paid Leave:** Contractor understands and agrees that Contractor is not entitled to any paid holidays, paid vacation, paid sick leave or other paid leave.

C. **Retirement:** Contractor shall be a member of the Santa Barbara County Employees Retirement System ONLY if both of these conditions are true: 1) Contractor is required to work at least forty (40) hours per bi-weekly pay period; and 2) Contractor's assignment is not deemed by County to be temporary, intermittent, or seasonal. Retirement benefits shall be pro-rated according to the applicable percentage of a full-time equivalent (i.e. .5, .6, .625, .75, .8, .875, .9, or 1.0).

D. **Other:** Contractor understands and agrees that Contractor is not and will not be eligible for membership in, or any benefits from, any County group plan or hospital, surgical or medical insurance.

Contractor is responsible for licensure fees, subscriptions to journals and other professional expenses not specifically detailed in this Agreement.

Contractor may be permitted to use County vehicles as part of Contractor's assignment and shall maintain a valid California Driver's License.

County may reimburse Contractor for necessary and prior-approved out-of-pocket expenses while performing required services for County, in accordance with County policy. All travel claims and other claim documents, when applicable, must include the board contract number. If the invoice does not properly reference the contract number, those invoices may be returned, delaying payment.

Except as required by law, Contractor is not eligible for any other job benefits accruable to an employee in the classified service of the County, unless otherwise specified herein or in Exhibit B.

8. **STANDARD OF PERFORMANCE.** Contractor represents that Contractor has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

9. **TAXES.** The County shall pay Contractor for professional services pursuant to this Agreement, payable upon biweekly submission of a time card, and such payment shall be subject to deductions and include withholding of state and federal taxes.

10. **CONFLICT OF INTEREST.** Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further

covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor.

11. **NONAPPROPRIATION.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated and budgeted or funds are otherwise not available for payments in the fiscal year covered by the term of the Agreement, then County will immediately notify Contractor of such occurrence and the Agreement may be terminated by County, with or without the prior notice specified in the Termination section of this Agreement. Subsequent to termination of this Agreement under this provision, County shall have no obligation to make payments with regard to the remainder of the term.

12. **OWNERSHIP OF DOCUMENTS.** County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Contractor shall not release any materials under this section except after prior written approval of County.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of County. County shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

13. **INDEMNIFICATION.** County will indemnify Contractor against any claim, lawsuit, or judgment arising out of Contractor's performance of duties under this Agreement.

Contractor agrees to notify County immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Contractor shall bear the cost of Contractor's own defense and liability for any act or omission arising from professional duties outside the scope of this Agreement. Nothing contained herein shall be deemed to increase County's liability beyond limitations set forth by law.

14. **NONDISCRIMINATION.** County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance. Contractor agrees to comply with County's Anti-Harassment Policy.

15. **NONEXCLUSIVE AGREEMENT.** Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

16. **ASSIGNMENT.** Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of County and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.** Either of the parties hereto may, for any reason, prior to the expiration date of this Agreement, cancel and terminate this Agreement upon thirty (30) days' written notice to the other. Upon a material breach of the terms and conditions of the Agreement by one of the parties, the non-breaching party (including Designated Representative's superiors) may terminate this Agreement upon the mailing of a written notice of termination to the breaching party. Written notification as required under this paragraph shall be given by Contractor to the County Designated Representative. Written

notification by County shall be given to the Contractor. In the case of material breach (including but not limited to: grossly negligent conduct, malpractice or criminal conduct, etc.) by Contractor, the Designated Representative or designee may immediately terminate the Agreement.

Upon termination, Contractor shall cease work (unless the notice directs otherwise), and deliver to County all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process.

Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service.

18. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

19. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

21. **NO WAIVER OF DEFAULT.** No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

22. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

23. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

24. **COMPLIANCE WITH LAW.** Contractor shall, at Contractor's sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

25. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

26. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

27. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

28. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions contained in the numbered sections shall prevail over those in the Exhibits.

29. **SURVIVAL.** All provisions which by their nature are intended to survive the termination of this Agreement shall survive termination of this Agreement.

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Agreement for Services of Contractor on Payroll between the County of Santa Barbara and Nubia Swain,  
M.D.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on October 6,  
2008.

COUNTY OF SANTA BARBARA

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Salud Carbajal  
Chair, Board of Supervisors

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CEO/HUMAN RESOURCES

**CONTRACTOR**

By: \_\_\_\_\_  
Human Resources Director

By: \_\_\_\_\_  
SocSec or TaxID Number:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS MARSHALL  
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W. GEIS, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Deputy County Counsel

By: \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND CONTENT:  
ANN DETRICK

APPROVED AS TO FORM:  
RISK MANAGEMENT

By: \_\_\_\_\_  
Department Director

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### STATEMENT OF WORK

Contractor shall serve as a Board-certified or Board-eligible psychiatrist for, and on behalf of, County under the general direction of the Director of Alcohol, Drug & Mental Health Services or designee, and will perform the following duties, to include but not be limited to:

#### A. Santa Maria Clinic

1. Contractor shall serve as a Board-certified or Board-eligible psychiatrist for, and on behalf of, County under the general direction of the Director of Alcohol, Drug & Mental Health Services (ADMHS) or designee for the Santa Maria Clinic.
2. Contractor shall provide outpatient services described in Section 3 to clients with mental health conditions and co-occurring disorders open to ADMHS. For the duration of this agreement, Contractor shall provide no more than 8 hours of services per week, at the direction of the ADMHS Medical Director. Services shall be provided at a location designated by the ADMHS Medical Director.
3. **SERVICES:**
  - a. Provide, as needed, all psychiatric services allowed under the scope of licensure as a licensed physician and surgeon in California.
  - b. Perform diagnostic, medication, and other evaluations.
  - c. Provide Medication Support Services, as described in Section 5, including prescribing and monitoring psychiatric medications and providing sample medications to clients, as appropriate.
  - d. Provide medication education for staff, clients, and families.
  - e. Provide Collateral services, as described in Section 5.
  - f. Participate in the development, review, revision, and approval of client Assessments/ Evaluations, as described in Section 5, and treatment plans.
  - g. Provide consultation, training, and support of multi-disciplinary team members, as needed.
  - h. Participate in utilization review, medication monitoring, quality improvement protocols, and peer review.
  - i. Adhere to documentation and reporting requirements established by County.
  - j. Perform other relevant work within the scope of Contractor's license, as directed.
  - k. Contractor shall:

- i) Accept training on the use of Online Progress Notes (OLPN) and document patient contacts using the OLPN format or other data collection system, as directed;
  - ii) Efficiently provide bridge orders for medications previously prescribed based on input from the clinic staff and client record;
  - iii) Schedule new patients for 1.0 hour during which Assessment, diagnosis, initial treatment plan, appropriate documentation and/or dictation of case shall be completed;
  - iv) Schedule follow-up appointments for 30 minutes. It is expected that a minimum of two (2) clients per hour will be seen and their care documented using the OLPN form;
  - v) Accommodate urgent concerns, walk-ins, medication refills, or other requests made by the designated Santa Maria Clinic Program Contact in the event of a client “no-show.”
4. Contractor agrees to store and dispense medications in compliance with all applicable State and Federal laws and regulations, as per California Code of Regulations Title 9, Chapter 11, Section 1810.435 (b)(2)&(3).
5. **DEFINITIONS:**
  - a. **Assessment/Evaluation.** A clinical analysis of the history and current status of the individual's mental, emotional, or behavioral disorder. Assessment includes: diagnosis; use of testing procedures; face-to-face contact with the client; appraisal of the individual's social functioning such as living situation, daily activities, school activities, social support systems and health status. Cultural issues shall be addressed as appropriate.
  - b. **Collateral.** Contact with one or more significant support persons in the life of the individual that may include consultation and training, to assist in better utilization of services and understanding mental illness or emotional disturbances. Collateral services include, but are not limited to, helping significant support persons to understand and address the individual's condition and involving the support persons in service planning and implementation of service plan(s).
  - c. **Medication Support Services.** Those services including prescribing, administering, dispensing, and monitoring psychiatric medications or biologicals which are necessary to alleviate the symptoms of mental illness. These services may include evaluation of the need for medication, evaluation of the clinical effectiveness and side effects, the obtaining of informed consent, medication education and plan development related to the delivery of the services and/or assessment of the client. These services may only be provided by a licensed physician.



- B. Contractor is currently, and for the duration of this Agreement shall remain, licensed in accordance with all local, State, and Federal licensure requirements as a provider of its kind. Services provided by unlicensed or uncertified persons shall not be compensated.
- C. Contractor shall provide to Alcohol, Drug & Mental Health Services Administration Quality Care Management Team (QCMT) a current copy of Contractor's Drug Enforcement Agency (DEA) certificate and physician's license.
- D. Contractor agrees to provide services in accordance with all applicable provisions of the Lanterman-Petris-Short Act, Welfare and Institutions Code §§5000-5550, Title 9 of the California Code of Regulations, and Short-Doyle Medi-Cal policies pursuant to the requirements of the Community Mental Health Services plan and policy as administered by the County's Director of Alcohol, Drug & Mental Health Services.

**E. NOTIFICATION.**

1. Contractor will notify County immediately in the event of: any known complaints against licensed staff; any restrictions in practice or license as stipulated by the State Bureau of Medical Quality Assurance, Community Care Licensing Division of the Department of Social Services of the State, or other State agency; any staff privileges being restricted at a hospital; any legal suits being initiated specific to Contractor practice; any criminal investigation of Contractor that is initiated; or any other action being instituted which affects Contractor license or practice (for example, sexual harassment accusations).
2. Contractor shall immediately notify County in the event a Client with a case file (episode) open to the County presents any of the following Client indices: suicidal risk factors, homicidal risk factors, assaultive risk factors, side effects requiring medical attention or observation, behavioral symptoms presenting possible health problems, or any behavioral symptom that may compromise the appropriateness of the placement.

F. **CONFIDENTIALITY.** Contractor agrees to maintain the confidentiality of patient records pursuant to 45 CFR §205.50 (requires patient, or patient representative, authorization specific to psychiatric treatment prior to release of information or a judge signed court order if patient authorization unavailable), and Exhibit BAA, HIPAA Business Associate Agreement. Patient records must comply with all appropriate State and Federal requirements.

G. **PERIODIC REVIEW.** Periodic review meetings between Contractor and County staff shall be held on fiscal and overall performance activity. The Care Coordinators, Quality Improvement staff, and the Program Managers or their designees shall conduct periodic on-site reviews of Contractor patient charting.

H. **UTILIZATION REVIEW.** Contractor agrees to abide by County Quality Management standards and cooperate with County utilization review process, which ensures medical necessity, appropriateness and quality of care. This review may include clinical record peer review, client survey, and other utilization review program monitoring practices. Contractor will cooperate with these programs, and will furnish necessary assessment and treatment plan information, subject to Federal or State confidentiality laws, and provisions of this Agreement.

## EXHIBIT B

### CONTRACTOR ON PAYROLL Compensation

County shall pay Contractor for professional services pursuant to this Agreement upon biweekly submission by Contractor of a timesheet, and such payment shall be subject to deductions and withholding of state and federal taxes. In no event shall the compensation payable exceed the total sum of \$35200 without written amendment. This not to exceed amount includes the following:

- **Santa Maria Adult Outpatient Clinic:** \$35200 for 320 hours of work by Contractor at a rate of \$110.00 per hour.

**Contract Summary**

**EID#** \_\_\_\_\_

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$25,000) or Purchasing (<\$25,000). See also "Contracts for Services" policy. Form is not applicable to revenue contracts.

D1. Fiscal Year..... 08-09  
 D2. Budget Unit Number ..... 043  
 D3. Requisition Number..... 08-027  
 D4. Department Name ..... Alcohol, Drug, & Mental Health Services  
 D5. Contact Person..... Danielle Spahn  
 D6. Telephone..... (805) 681-5229

K1. Contract Type (check one): x Personal Service ρ Capital  
 K2. Brief Summary of Contract Description/Purpose ..... COP Psychiatrist at Santa Maria Clinic  
 K3. Contract Amount..... \$35200  
 K4. Contract Begin Date ..... 10/6/2008  
 K5. Original Contract End Date ..... 6/30/2009  
 K6. Amendment History .....

Seq#	Effective Date	ThisAmndtAmt	CumAmndtToDate	NewTotalAmt	NewEndDate	Purpose

B1. Is this a Board Contract? (Yes/No) ..... True  
 B2. Number of Workers Displaced (if any) ..... N/A  
 B3. Number of Competitive Bids (if any) ..... N/A  
 B4. Lowest Bid Amount (if bid) ..... N/A  
 B5. If Board waived bids, show Agenda Date ..... N/A  
 and Agenda Item Number .....  
 B6. Boilerplate Contract Text Unaffected? (Yes / or cite Paragraph)... Yes

F1. Encumbrance Transaction Code..... 1701  
 F2. Current Year Encumbrance Amount..... \$35200  
 F3. Fund Number..... 0044  
 F4. Department Number ..... 043  
 F5. Division Number (if applicable)..... N/A  
 F6. Account Number..... 6177  
 F7. Cost Center number (if applicable) ..... 043-02-01-2110-0  
 F8. Payment Terms ..... Net 30

V1. Vendor Numbers (A=Auditor; P=Purchasing) EID ..... EID to be Assigned  
 V2. Payee/Contractor Name ..... Nubia Swain, M.D.  
 V3. Mailing Address ..... 1055 Zinnia Ct..  
 V4. City, State (two-letter) Zip (include +4 if known) ..... Nipomo, CA 93444  
 V5. Telephone Number..... 8059051793  
 V6. Contractor's Federal Tax ID Number (EIN or SSN)..... Confidential  
 V7. Contact Person..... Nubia Swain, M.D.  
 V8. Workers Comp Insurance Expiration Date..... N/A  
 V9. Liability Insurance Expiration Date[s] ..... N/A  
 V10. Professional License Number ..... C51928  
 V11. Verified by (name of county staff)..... Danielle Spahn  
 V12. Company Type (Check one):  Individual ρ Sole Proprietorship ρ Partnership ρ Corporation

I certify information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_