

FIFTH AMENDMENT

TO AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

This is an amendment (hereafter referred to as the "Fifth Amended Contract") to the Agreement for Services of Independent Contractor, number **BC 05-100**, by and between the **County of Santa Barbara (COUNTY)** and **Mental Health Systems, Inc. (CONTRACTOR)**, for the continued provision of **NNA Substance abuse services**.

Whereas, this Fifth Amended Contract incorporates the terms and conditions set forth in the contract approved by the **COUNTY** Board of Supervisors in September 2004, the First Amendment approved by the **COUNTY** Board of Supervisors in July 2005, the Second Amendment approved by the ADMHS Director in June 2006, the Third Amendment approved by the **COUNTY** Board of Supervisors in June 2006, the Fourth Amendment approved by the **COUNTY** Board of Supervisors in June 2007, except as modified by this Fifth Amended Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **COUNTY** and **CONTRACTOR** agree as follows:

I. **Delete Item 4, Term, of the Agreement and replace with the following:**

4. **TERM. CONTRACTOR** shall commence performance on **July 1, 2008** and end performance upon completion, but no later than **June 30, 2009** unless otherwise directed by **COUNTY** or unless earlier terminated.

II. **Delete Item 1, Paragraph 1, of Exhibit B, Payment Arrangements, and replace with the following:**

1. **CONTRACTOR SERVICES.** For **CONTRACTOR** services to be rendered under this Agreement, **CONTRACTOR** shall be paid at the rate specified in the Schedule of Services (Exhibit B-1), attached hereto and with this reference made a part hereof, with a maximum value not to exceed **\$300532**.

III. **Delete Exhibit B-1, Schedule of Services, and replace with the following:**

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**EXHIBIT B-1
SCHEDULE OF SERVICES**

The program services, as listed below, described in Exhibit A and the Provider Workbook shall be reimbursed according to rates shown on the **COUNTY'S** invoice and in the Provider Workbook. **COUNTY** and **CONTRACTOR** have mutually agreed to the program services as outlined in the Provider Workbook; **COUNTY** shall provide **CONTRACTOR** with a signed copy of the Provider Workbook.

Specific services shall conform to California Department of Alcohol and Drug Programs service code as defined in Exhibit A.

TYPE OF SERVICE	Total Annual Provisional Amount
NON-RESIDENTIAL	
Outpatient Drug Free (ODF) Substance Abuse Treatment Court (Negotiated Net Amount and Drug Court funds) includes individual and group counseling	\$300,532
SACPA-Prop 36, Level 1-3 Services and Support Services (In accordance with the Program Workbook) includes SATTA-Drug Testing Funds	
Total Funding in FY 08-09	\$300,532
The negotiated rate, units of service and maximum monthly billable amount is reflected on the invoice form and based upon CONTRACTOR's program budget, prior year cost report, and contract negotiations with COUNTY , all contained in the Provider Workbook.	
<u>ESTIMATE OF FEES COLLECTED</u>	
When appropriate, CONTRACTOR agrees to assess and charge program fees for NNA and SACPA clients, as outlined in <u>Exhibit B</u> (Paragraph 7) and <u>Exhibit B-2</u> . All fees collected by CONTRACTOR shall be reported to COUNTY on the CONTRACTOR's monthly invoice form.	
<u>MATCH FUNDS</u>	
CONTRACTOR's program may require Matching Funds as outlined in CONTRACTOR's proposal and in the Provider Workbook. Any modification in the amount, method or source of match funds needs to be approved by COUNTY .	

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IV. Delete Exhibit B-2, Fee Schedule (Sliding Scale), and replace with the following:

EXHIBIT B-2

**COUNTY OF SANTA BARBARA
ALCOHOL & DRUG PROGRAM
FEE SCHEDULE
FY 2008-2009**

**ANNUAL GROSS FAMILY INCOME
NUMBER OF DEPENDENTS**

FEE PER VISIT	1	2	3	4	5	6	7	8
5	10,400	14,000	17,600	21,200	24,800	28,400	32,000	35,600
10	14,000	16,900	19,800	22,700	25,600	28,500	31,400	34,300
15	17,600	20,500	23,400	26,300	29,200	32,100	35,000	37,900
20	21,200	24,100	27,000	29,900	32,800	35,700	38,600	41,500
25	24,800	27,700	30,600	33,500	36,400	39,300	42,200	45,100
30	28,400	31,300	34,200	37,100	40,000	42,900	45,800	48,700
35	32,000	34,900	37,800	40,700	43,600	46,500	49,400	52,300
40	35,600	38,500	41,400	44,300	47,200	50,100	53,000	55,900
45	39,200	42,100	45,000	47,900	50,800	53,700	56,600	59,500
50	42,800	45,700	48,600	51,500	54,400	57,300	60,200	63,100
55	46,400	49,300	52,200	55,100	58,000	60,900	63,800	66,700
60	50,000	52,900	55,800	58,700	61,600	64,500	67,400	70,300
65	53,600	56,500	59,400	62,300	65,200	68,100	71,000	73,900
70	57,200	60,100	63,000	65,900	68,800	71,700	74,600	77,500
75	60,800	63,700	66,600	69,500	72,400	75,300	78,200	81,100
80	64,400	67,300	70,200	73,100	76,000	78,900	81,800	84,700
85	68,000	70,900	73,800	76,700	79,600	82,500	85,400	88,300
90	71,600	74,500	77,400	80,300	83,200	86,100	89,000	91,900

**MONTHLY GROSS FAMILY INCOME
NUMBER OF DEPENDENTS**

FEE PER VISIT	1	2	3	4	5	6	7	8
5	867	1,167	1,467	1,767	2,067	2,367	2,667	2,967
10	1,167	1,408	1,650	1,892	2,133	2,375	2,617	2,858
15	1,467	1,708	1,950	2,192	2,433	2,675	2,917	3,158
20	1,767	2,008	2,250	2,492	2,733	2,975	3,217	3,458
25	2,067	2,308	2,550	2,792	3,033	3,275	3,517	3,758
30	2,367	2,608	2,850	3,092	3,333	3,575	3,817	4,058
35	2,667	2,908	3,150	3,392	3,633	3,875	4,117	4,358
40	2,967	3,208	3,450	3,692	3,933	4,175	4,417	4,658
45	3,267	3,508	3,750	3,992	4,233	4,475	4,717	4,958
50	3,567	3,808	4,050	4,292	4,533	4,775	5,017	5,258
55	3,867	4,108	4,350	4,592	4,833	5,075	5,317	5,558
60	4,167	4,408	4,650	4,892	5,133	5,375	5,617	5,858
65	4,467	4,708	4,950	5,192	5,433	5,675	5,917	6,158
70	4,767	5,008	5,250	5,492	5,733	5,975	6,217	6,458
75	5,067	5,308	5,550	5,792	6,033	6,275	6,517	6,758
80	5,367	5,608	5,850	6,092	6,333	6,575	6,817	7,058
85	5,667	5,908	6,150	6,392	6,633	6,875	7,117	7,358
90	5,967	6,208	6,450	6,692	6,933	7,175	7,417	7,658

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- V. **Delete Exhibit D, HIPAA Privacy Business Associate Addendum, and replace with the following:**

Exhibit BAA

HIPAA Business Associate Agreement

1. Use and Disclosure of Protected Health Information

Except as otherwise provided in this Exhibit, the Contractor may use or disclose Protected Health Information (“PHI”)¹ to perform functions, activities or services for or on behalf of the County, as specified in the underlying agreement, provided that such use or disclosure does not violate HIPAA or other law. The uses and disclosures of PHI may not exceed the limitations applicable to the County under the regulations except as authorized for management, administrative or legal responsibilities of the Contractor. PHI includes without limitation “Electronic Protected Health Information” (“E PHI”)²

2. Requirement to Train Own Employees

The Contractor has a responsibility to provide effective training for all members of its workforce (including its own employees, management, staff, volunteers and independent contractors) who will or who are likely to have any access to or exposure to PHI or EPHI. Members of the Contractor’s workforce who use, disclose, handle, view, process, distribute, access, audit, create, receive or have any exposure to PHI or EPHI must receive training on both the HIPAA Privacy Rule and the HIPAA Security Rule. Privacy Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.530 (b). Security Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.308 (a)(5).

3. Further Disclosure of PHI

The Contractor shall not use or further disclose PHI other than as permitted or required by the underlying Agreement, or as required by law.

4. Safeguarding PHI

The Contractor shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the underlying Agreement. Contractor shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI that Contractor creates, receives, maintains or transmits on behalf of County. The actions taken by the Contractor to safeguard EPHI shall include, but may not be limited to:

- a. Encrypting EPHI that it stores and transmits;
- b. Implementing strong access controls, including physical locks, firewalls, and strong passwords;
- c. Using antivirus software that is upgraded regularly;
- d. Adopting contingency planning policies and procedures, including data backup and disaster recovery plans; and

¹ “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

² “Electronic Protected Health Information” means Protected Health Information, which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media, Exhibit BAA HIPAA Business Associate Agreement

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e. Conducting periodic security training.

5. **Unauthorized Use or Disclosure of PHI**

The Contractor shall report to the County any use or disclosure of the PHI not provided for by the underlying Agreement or otherwise in violation of the Privacy Rule or Security Rule. Contractor shall report to County any security incidents within 10 days of becoming aware of such incidents. For purposes of this paragraph, "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.

6. **Agents and Subcontractors of the Business Associate**

The Contractor shall ensure that any agent, including a subcontractor, to which the Contractor provides PHI received from, or created or received by the Contractor on behalf of the County, shall comply with the same restrictions and conditions that apply through the underlying Agreement to the Contractor with respect to such information. The Contractor shall ensure that any agent to whom it provides PHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such PHI. Contractor shall not use subcontractors or agents, unless it receives prior written consent from County.

7. **Access to PHI**

At the request of the County, and in the time and manner designated by the County, the Contractor shall provide access to PHI in a Designated Record Set to an Individual or the County to meet the requirements of 45 Code of Federal Regulations Section 164.524.

8. **Amendments to Designated Record Sets**

The Contractor shall make any amendment(s) to PHI in a Designated Record Set that the County directs or at the request of the Individual, and in the time and manner designated by the County in accordance with 45 Code of Federal Regulations Section 164.526.

9. **Documentation of Uses and Disclosures**

The Contractor shall document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations Section 164.528. Contractor agrees to implement a process that allows for an accounting to be collected and maintained by Contractor and its agents or subcontractors for at least six years prior to the request, but not before the compliance date of the Privacy Rule.

10. **Accounting of Disclosures**

The Contractor shall provide to the County or an Individual, in the time and manner designated by the County, information collected in accordance with 45 Code of Federal Regulations Section 164.528, to permit the County to respond to a request by the Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations Section 164.528.

11. **Records Available to Covered Entity and Secretary**

The Contractor shall make available records related to the use, disclosure, security and privacy protection of PHI received from the County, or created or received by the Contractor on behalf of the County, to the County or to the Secretary of the United State Department of Health and Human Services for purposes of investigating or auditing the County's compliance with the HIPAA privacy and security regulations, in the time and manner designated by the County or the Secretary.

12. **Destruction of PHI**

a. Upon termination of the underlying Agreement for any reason, the Contractor shall:

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- (1) Return all PHI received from the County, or created or received by the Contractor on behalf of the County required to be retained by the Privacy Rule; or
- (2) Return or destroy all other PHI received from the County, or created or received by the Contractor on behalf of the County.

This provision also shall apply to PHI in possession of subcontractors or agents of the Contractor. The Contractor, its agents or subcontractors shall retain no copies of the PHI. However, Contractor, its agents or subcontractors shall retain all protected information throughout the term of the underlying Agreement and shall continue to maintain the information required under Section 9 of this Exhibit for a period of six years after termination of the underlying Agreement.

- b. In the event the Contractor determines that returning or destroying the PHI is not feasible, the Contractor shall provide the County notification of the conditions that make return or destruction not feasible. If the County agrees that the return of the PHI is not feasible, the Contractor shall extend the protections of this Exhibit to such PHI and limit further use and disclosures of such PHI for so long as the Contractor, or any of its agents or subcontractors, maintains such PHI.

13. Amendments

The Parties agree to take such action as is necessary to amend the underlying Agreement as necessary for the County to comply with the requirements of the Privacy Rule and its implementing regulations.

14. Mitigation of Disallowed Uses and Disclosures

The Contractor shall mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of the underlying Agreement or the Privacy Rule.

15. Termination of Agreement

The County shall terminate the underlying Agreement upon knowledge of a material breach by the Contractor of which the Contractor fails to cure.

16. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those in the Privacy Rule.

17. Interpretation

Any ambiguity in this Exhibit shall be resolved to permit County to comply with the Privacy Rule and Security Rule.

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SIGNATURE PAGE

Amendment for Agreement for Services of Independent **CONTRACTOR** between the **COUNTY** of Santa Barbara and Mental Health Systems, Inc..

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by **COUNTY**.

COUNTY OF SANTA BARBARA

By: _____
SALUD CARBAJAL
CHAIR, BOARD OF SUPERVISORS
Date: _____

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

CONTRACTOR

By: _____
Deputy
Date: _____

By: _____
Tax Id No 95-3302967
Date: _____

APPROVED AS TO FORM:
DANIEL J. WALLACE
COUNTY COUNSEL

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

By _____
Deputy County Counsel
Date: _____

By _____
Deputy
Date: _____

APPROVED AS TO FORM :
ALCOHOL, DRUG, AND MENTAL HEALTH
SERVICES
ANN DETRICK, PH.D.
DIRECTOR

APPROVED AS TO INSURANCE FORM:
RAY AROMATORIO
RISK PROGRAM ADMINISTRATOR

By _____
Director
Date: _____

By: _____
Date: _____

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CONTRACT SUMMARY PAGE

BC 05-100

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
 D4. Department Name Alcohol, Drug, & Mental Health Services
 D5. Contact Person Erin Jeffery
 D6. Telephone..... (805) 681-5168

K1. Contract Type (check one): Personal Service Capital
 K2. Brief Summary of Contract Description/Purpose NNA Substance abuse services
 K3. Contract Amount..... \$300532
 K4. Contract Begin Date 7/1/2008
 K5. Original Contract End Date 6/30/05
 K6. Amendment History

Seq#	Effective Date	ThisAmndtAmt	CumAmndtToDate	NewTotalAmt	NewEndDate	Purpose
1	7/1/2008	300532		300532	6/30/2009	Renew for FY 08-09

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 \$300532
 F3. Fund Number..... 0044
 F4. Department Number 043
 F5. Division Number (if applicable).....
 F6. Account Number..... 7460
 F7. Cost Center number (if applicable)..... 6100
 F8. Payment Terms Net 30

V1. Vendor Numbers (A=Auditor; P=Purchasing) EID A = 258737
 V2. Payee/Contractor Name Mental Health Systems, Inc.
 V3. Mailing Address 9465 Farnham St.
 V4. City, State (two-letter) Zip (include +4 if known) San Diego, CA 92123
 V5. Telephone Number..... 8585732600
 V6. Contractor's Federal Tax ID Number (EIN or SSN) 95-3302967
 V7. Contact Person Kimberly Bond Executive Director
 V8. Workers Comp Insurance Expiration Date 4/1/2009
 V9. Liability Insurance Expiration Date[s] G=10/1/2008 P=10/1/2008
 V10. Professional License Number N/A
 V11. Verified by (name of county staff)..... Erin Jeffery
 V12. Company Type (Check one): Individual Sole Proprietorship Partnership Corporation

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

Date: _____ Authorized Signature: _____