

COUNTY OF SAN MATEO
Departmental Correspondence

DATE: **AUG 22 2001**
HEARING DATE: **SEP 11 2001**

TO: Honorable Board of Supervisors
FROM: Gale Bataille, Director, Mental Health Services
SUBJECT: Agreement with G. Austin Conkey, M.D.



RECOMMENDATION

Adopt a resolution authorizing the President of the Board to execute an agreement with G. Austin Conkey, M.D.

Background

Mental Health Services Division has been largely successful in its recruitment and retention of psychiatrists for permanent positions. There are, however, gaps in coverage of necessary psychiatric services. Contracting psychiatrists, who have flexibility and availability to work part-time, fill these gaps.

Discussion

Physicians are exempt from Administrative Memorandum B-1, which governs the selection of independent contractors and requires a Request for Proposals process. However, Mental Health Services Division runs advertisements for specialty psychiatric services on a regular basis in Northern California Psychiatric Newsletter and other venues as needed.

This contractor has been a provider at Cordilleras Mental Health Center for several years now and continues to be the most qualified candidate for this position. Contractor will provide psychiatric services for San Mateo County Medi-Cal beneficiaries and San Mateo County indigent clients at Cordilleras Mental Health Center, including: admission assessments and treatment planning, psychiatric and psychopharmacological treatment of admitted clients, participation in Quality Assurance and Utilization Review meetings, consultations with clinical staff as needed, and participation in clinical case conferences as needed. Contractor will also provide court-related services for clients at Cordilleras. The previous contract with this provider was for a one-year term. To simplify our contract process, this contract will be for a two-year period.

Honorable Board of Supervisors
Agreement/G. Austin Conkey, M.D.
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Term

The term of the agreement is from July 1, 2001 through June 30, 2003. The agreement has been reviewed and approved by Risk Management and County Counsel.

Fiscal Impact

Contractor shall work an average of 20 hours per week and be paid at the rate of \$78.23 per hour for the first year of the contract and \$82.92 per hour for the second year. The change in the rate reflects a 6% COLA increase. Contract amount shall not exceed \$167,596 for the two-year term. It is estimated that \$81,359 will be required for the first year of the contract and has been included in the 2001-02 Mental Health Services' Division budget. Sales tax through realignment will cover 82% or \$66,714. The remaining \$14,645 represents the net county cost for FY 2001-02. A similar arrangement will be in place for FY 2002-03.

RECOMMENDED


HEALTH SERVICES DEPARTMENT

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH
G. AUSTIN CONKEY, M.D.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that;

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance an agreement, reference to which is hereby made for further particulars, whereby G. Austin Conkey, M.D., shall provide psychiatric services for San Mateo County mental health clients; and

WHEREAS, this Board has been presented with a form of the Agreement and has examined and approved it as to both form and content and desires to enter into the Agreement:

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors to execute said Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto.

AGREEMENT WITH G. AUSTIN CONKEY, M.D.
FOR PSYCHIATRIC SERVICES

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and G. AUSTIN CONKEY, M.D., hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of performing the professional services hereinafter described for the Health Services Agency, Mental Health Services Division; and

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

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

1. Services to be Performed by Contractor

In consideration of the payments hereinafter set forth, Contractor, under the general direction of the Director of Health Services, or her designee, with respect to the product or result of Contractor's services, shall provide psychiatric services as described in Schedule A, attached hereto and incorporated by reference herein. Such services shall be provided in a professional and diligent manner.

2. Payments

A. Maximum Amount. In full consideration of Contractor's performance of the services described in Schedule A, the amount that County shall be obligated to pay for services rendered under this Agreement shall not exceed ONE HUNDRED SIXTY-SEVEN THOUSAND FIVE HUNDRED NINETY-SIX DOLLARS (\$167,596) for the contract term.

B. Rate of Payment. The rate and terms of payment shall be as specified in Schedule B, attached hereto and incorporated herein. Any rate increase is subject to the approval of the Director of Health Services or her designee, and shall not be binding on County unless so approved in writing. In no event may the rates established in Schedule B be increased to the extent that the maximum County obligation shall exceed the total specified in paragraph 2A above. Each payment shall be conditioned on the performance of the services described in Schedule A to the full satisfaction of the Director of Health Services or her designee.

C. Time Limit for Submitting Invoices. Contractor shall submit an invoice for services to County for payment in accordance with the provisions of Schedule B. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one hundred eighty (180) days after the date Contractor renders the services, or more than ninety (90) days after this Agreement terminates, whichever is earlier.

3. Relationship of Parties

It is expressly understood that this is an agreement between two (2) independent contractors and that no agency, employee, partnership, joint venture or other relationship is established by this Agreement. The intent by both County and Contractor is to create an independent contractor relationship. Contractor expressly acknowledges and accepts his/her tax status and the tax consequences of an independent contractor. Further, as an independent contractor, Contractor expressly acknowledges and accepts that he/she has no rights, benefits, privileges and/or claims in any form whatsoever under, from, through and/or pursuant to the San Mateo County Civil Service Rules.

4. Insurance

Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the Director of Health Services. Contractor shall furnish the Health Services Agency with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide

that thirty (30) days' notice must be given, in writing, to the Health Services Agency of any pending change in the limits of liability or of any cancellation or modification of the policy.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

A. Workers' Compensation and Employer Liability Insurance. Contractor shall have in effect during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, County makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

B. Liability Insurance. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below.

Such insurance shall include:

- 1) Comprehensive General Liability \$0
- 2) Motor Vehicle Liability Insurance \$0
- 3) Professional Liability \$1,000,000

If this Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving sixty (60) days' notice to Contractor.

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. Said certificate(s) of insurance is (are) attached hereto and incorporated by reference herein as Attachment II (and III).

5. Non-Discrimination

Contractor shall comply with the non-discrimination requirements described in Schedule C, which is attached hereto, and incorporated herein.

Contractor shall comply with County admission and treatment policies which shall provide that patients are accepted for care without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, handicap, or political affiliation.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties, to be determined by the County Manager, including, but not limited to:

- i. termination of this Agreement;
- ii. disqualification of Contractor from bidding on or being awarded a County contract for a period of up to three (3) years;
- iii. liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation;
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to:

- i. examine Contractor's employment records with respect to compliance with this paragraph;
- ii. set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other contractor between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified Contractor that such charges

are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed.

With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

6. Assignments and Subcontracts

A. Without the written consent of the Director of Health Services or her designee, this Agreement is not assignable in whole or in part. Any assignment by Contractor without the written consent of the Director of Health Services or her designee is a breach of this Agreement and shall automatically terminate this Agreement.

B. Contractor shall not employ subcontractors or consultants to carry out the responsibilities undertaken pursuant to this contract without the written consent of the Director of Health Services or her designee.

C. All assignees, subcontractors, or consultants approved by the Director of Health Services or her designee shall be subject to the same terms and conditions applicable to Contractor under this Agreement, and Contractor shall be liable for the assignee's, subcontractor's or consultant's acts and/or omissions.

D. All agreements between Contractor and subcontractor and/or assignee for services pursuant to this Agreement shall be in writing and shall be provided to County.

7. Amendment of Agreement

This Agreement is complete and contains all the terms and conditions agreed upon by the parties. No amendment shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

8. Records

A. Contractor agrees to provide to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all

records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

B. Contractor shall maintain and preserve all financial records relating to this Agreement for a period of four (4) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

9. Compliance with Applicable Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county, and municipal laws, including, but not limited to, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

10. Interpretation and Enforcement

A. Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:

- 1) In the case of County, to:
San Mateo County
Mental Health Services Division
225 37th Avenue
San Mateo, CA 94403

or to such person or address as County may, from time to time furnish to Contractor.

- 2) In the case of Contractor, to:

G. Austin Conkey, M.D.
185 Beacon Street
San Francisco, CA 94131

B. Controlling Law. The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation and performance of this Agreement shall be governed by the laws of the State of California.

12. Term of the Agreement

Subject to compliance with the terms and conditions of this Agreement, the term of this Agreement shall be from July 1, 2001 through June 30, 2003. This Agreement may be terminated by Contractor, Director of Health Services or her designee at any time upon sixty (60) days' written notice to the other party.

Parties recognize that Contractor has performed services from July 1, 2001 through date of execution of this Agreement in anticipation of execution of this Agreement. Parties agree that services are subject to all terms and conditions contained herein.

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

COUNTY OF SAN MATEO

G. AUSTIN CONKEY, M.D.

By: _____
Michael D. Nevin, President
Board of Supervisors, San Mateo County

By: G. Austin Conkey, M.D.

Date: _____

Date: 18 July 2001

ATTEST:

By: _____
Clerk of Said Board

Date: _____

SCHEDULE A

G. AUSTIN CONKEY, MD

JULY 1, 2001 THROUGH JUNE 30, 2003

SERVICES

Contractor shall provide the services described below in a manner consistent with the terms and provisions of this Agreement.

- A. Contractor will provide psychiatric services for San Mateo County Medi-Cal beneficiaries and San Mateo County indigent clients at Cordilleras Mental Health Center.
- B. Services shall include: admission assessments and treatment planning, psychiatric and psychopharmacological treatment of admitted clients, participation in Quality Assurance and Utilization Review meetings, consultations with clinical staff as needed, and participation in clinical case conferences as needed.
- C. Contractor shall provide court-related services for clients of Dr. Rovinsky who are at Cordilleras.
- D. Contractor shall work under the general direction of the Mental Health Services Medical Director or her designee.
- E. Contractor shall work an average of twenty (20) hours per week.
- F. Case documentation shall be maintained in compliance with Short-Doyle Medi-Cal standards as described in DMH Notice 94-14, the Rehabilitation option including completion of the Physician's Initial Note, Mental Health Services' Medication Consent Forms, and progress and prescribing notes. Charts shall be subject to annual medication monitoring review.

SCHEDULE B

G. AUSTIN CONKEY, MD

JULY 1, 2001 THROUGH JUNE 30, 2003

PAYMENTS

A. Maximum Obligation

1. For the first (1st) year of the term of this Agreement (July 1, 2001 through June 30, 2002), County shall pay Contractor at a rate of SEVENTY-EIGHT DOLLARS AND TWENTY-THREE CENTS (\$78.23) per hour for an average of twenty (20) hours per week, not to exceed EIGHTY-ONE THOUSAND THREE HUNDRED FIFTY-NINE DOLLARS (\$81,359).
2. After the first (1st) year, County shall pay Contractor at a rate of EIGHTY-TWO DOLLARS AND NINETY-TWO CENTS (82.92) per hour for an average of twenty (20) hours per week, not to exceed EIGHTY-SIX THOUSAND TWO HUNDRED THIRTY-SEVEN DOLLARS (\$86,237).
3. Notwithstanding the method of payment set forth herein, in no event shall County pay or be obligated to pay Contractor more than the sum of ONE HUNDRED SIXTY-SEVEN THOUSAND FIVE HUNDRED NINETY-SIX DOLLARS (\$167,596) for services provided under Schedule A of this Agreement.

B. Contractor shall submit an invoice describing the number of hours worked for the previous month.

C. Contractor is expected to be responsible for all other expenses incurred during the performance of services rendered under this Agreement.

SCHEDULE C

Contract between County of San Mateo and G. Austin Conkey, M.D., hereinafter called "Contractor."

- a. No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over forty (40)), disability, medical condition (including but not limited to AIDS, HIV positive diagnosis, or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement.
- b. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this contract. Contractor's personnel policies shall be made available to County upon request.
- c. Contractor shall assure compliance with Section 504 of the Rehabilitation Act of 1973 by submitting a signed letter of assurance (Attachment I) of compliance. Contractor shall be prepared to submit a self-evaluation and compliance plan to County upon request within one (1) year of the execution of this Agreement.

Attachment I

(Required only from Contractors who provide services directly to the Public on County's behalf.)

Assurance of Compliance with Section 504 of the
Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of and for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. employs fewer than 15 persons.
- b. employs 15 or more persons and, pursuant to Section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

G. AUSTIN CONKEY, MD

Name of 504 Person - Type or Print

G. Austin Conkey, M.D.

Name of Contractor(s) - Type or Print

185 Beacon Street

Street Address or PO Box

San Francisco

City

CA

State

94131

Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

18 July 2001

Date

G. Austin Conkey, MD

Signature and Title of Authorized Official

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a handicapped person seeking its services, there is no method of complying with (the facility accessibility regulations)...other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: G. Austin Conkey, M.D.

Contact Person: same

Address: 185 Beacon Street

San Francisco, CA 94131

Phone Number: 415-584-0434 Fax Number: 415-333-0195

II Employees

Does the Contractor have any employees? ___ Yes X No

Does the Contractor provide benefits to spouses of employees? ___ Yes X No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- Yes, the Contractor complies by offering equal benefits...
Yes, the Contractor complies by offering a cash equivalent payment...
No, the Contractor does not comply.
The Contractor is under a collective bargaining agreement...

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 18 day of July, 2001 at San Francisco, CA

Signature of G. Austin Conkey, M.D.

Name (Please Print) G. Austin Conkey, MD

Title

Contractor Tax Identification Number 523 368339

Medical Insurance Exchange of California

6250 CLAREMONT AVENUE OAKLAND, CALIFORNIA 94618-1324 TELEPHONE (510) 428-9411 FROM OUTSIDE CALIFORNIA (800) 227-4527

CERTIFICATE OF INSURANCE

As requested, we are pleased to certify that Professional Liability Insurance on a "claims made" basis is in effect for the insured named herein, subject to the provisions of the policy designated.

POLICYHOLDER: G AUSTIN CONKEY, M.D.
185 BEACON ST
SAN FRANCISCO, CA 94131-2627

POLICY NUMBER: DR02-01172I

ORIGINAL EFFECTIVE DATE: JUNE 26, 1980
RETROACTIVE DATE: JUNE 26, 1980
POLICY EFFECTIVE DATE: FEBRUARY 01, 2001
POLICY EXPIRATION DATE: FEBRUARY 01, 2002
SPECIALTY: PSYCHIATRY
SUB-SPECIALTY: PSYCHIATRY, CHILD

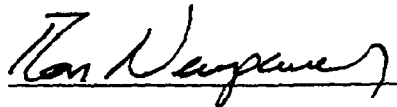
LIMITS OF LIABILITY: OF AT LEAST

EACH CLAIM	\$1,000,000	Any one claim or suit or maximum for the results of one injury.
ANNUAL AGGREGATE	\$3,000,000	Aggregate annual maximum for the results of all claims.

1. This Certificate is not an insurance policy and does not amend or alter the coverage afforded by the policy listed on the Certificate.
2. Notwithstanding any requirement, term or condition of any contract or other document with respect to which the Certificate is issued, the insurance afforded by the policy listed on the Certificate is subject to all terms of such policy.

Countersigned: Medical Underwriters of California
Attorney-in-Fact

This certificate issued to:

by 

G AUSTIN CONKEY, M.D.

Date JANUARY 03, 2001

COUNTY OF SAN MATEO
HEALTH SERVICES ADMINISTRATION

MEMORANDUM

DATE: July 16, 2001

TO: Priscilla Morse, Risk Management/Insurance Division
FROM: Mary Vozikes, Mental Health Services/PONY #MLH 322

CONTRACTOR: G. Austin Conkey, M.D.

DO THEY TRAVEL: No

PERCENT OF TRAVEL TIME:

NUMBER OF EMPLOYEES: No

DUTIES (SPECIFIC): See attached

COVERAGE:

Comprehensive General Liability:	\$0
Motor Vehicle Liability:	\$0
Professional Liability:	\$1,000,000
Worker's Compensation:	\$No

APPROVE X WAIVE _____ MODIFY _____

REMARKS/COMMENTS:

Priscilla Morse
SIGNATURE