

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
LOVELLA CALUYA-DIAZ, M.D. DBA BAYWOOD MEDICAL GROUP**

THIS AGREEMENT, entered into this _____ day of _____,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called
"County," and LOVELLA CALUYA-DIAZ, M.D. DBA BAYWOOD MEDICAL
GROUP, hereinafter called "Contractor";

W I T N E S S E T H:

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

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

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

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment I—§504 Compliance

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed ONE HUNDRED FIFTY-TWO THOUSAND NINE HUNDRED FIFTY DOLLARS (\$152,950).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2005 through June 30, 2007.

This Agreement may be terminated by Contractor, the Director of Mental Health Services or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Mutual Hold Harmless

- (A) Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of: (1) injuries to or death of any person, including Contractor, or (2) damage to any property of any kind whatsoever and to whomsoever belonging, or (3) any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this Agreement, or (4) any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (5) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction

to be solely liable by reason of its own negligence or willful misconduct.

- (B) The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- (C) County shall indemnify and save harmless Contractor, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of: (1) injuries to or death of any person, including County, or (2) damage to any property of any kind whatsoever and to whomsoever belonging, or (3) any sanctions, penalties or claims of damages resulting from County's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (4) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of Contractor, its officers, agents, employees, or servants, resulting from the performance of any work required of County, provided that this shall not apply to injuries or damage for which Contractor has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.
- (D) The duty of County to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- (E) Further, both Contractor and County shall indemnify and save harmless each other, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of any sanctions, penalties or claims of damages resulting from either party's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended. The Parties shall indemnify and save harmless each other, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of any sanctions, penalties or claims of damages resulting from either party's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the 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 Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's 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.

- (2) **Liability Insurance** The 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/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor 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 be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (a) Comprehensive General Liability | \$0 |
| (b) Motor Vehicle Liability Insurance | \$0 |
| (c) Professional Liability | \$1,000,000 |

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 the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the 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.

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, the County of San Mateo 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.

10. Compliance with laws; payment of Permits/Licenses

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, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.

- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
- i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$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 section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract 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 30 days of such filing, provided that within such 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 their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* 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.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine 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.

13. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

14. 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.

15. Notices

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

In the case of County, to:

San Mateo County Health Department
Mental Health Services
225 37th Avenue
San Mateo, CA 94403

In the case of Contractor, to:

Lovella Caluya-Diaz, M.D.
136 North San Mateo Drive, Suite 101
San Mateo, CA 94402

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

COUNTY OF SAN MATEO

By: _____
Richard S. Gordon, President
Board of Supervisors

Date: _____

ATTEST:

By: _____
Clerk of Said Board

LOVELLA CALUYA-DIAZ, M.D.
DBA BAYWOOD MEDICAL GROUP

 Lovella Diaz M.D.
Contractor's Signature

Date: 11/04/05

Long Form Agreement/Non Business Associate v 6/24/04

LOVELLA CALUYA-DIAZ, M.D.
DBA BAYWOOD MEDICAL GROUP
FY 2005 – 2007
EXHIBIT A

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

I. Description of Services to be Performed by Contractor

- A. Contractor shall provide up to fifteen (15) hours per week of psychiatric services for clients enrolled in the Pre-to-Three Program. Services will primarily be provided to parents and/or guardians of Pre-to-Three child clients, and will include consultation with affiliated providers.
- B. Contractor shall work under the general direction of the Mental Health Services Medical Director or her designee.
- C. 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, The Mental Health Services Documentation Manual, and progress and prescribing notes. Charts shall be subject to annual medication monitoring review.

II. Administrative Requirements

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

Contractor shall participate in the San Mateo County Mental Health Services Organized Health Care Arrangement (OHCA) as defined by the Health Information Privacy and Accountability Act (HIPAA) Privacy Rule (106.103). Contractor shall follow all HIPAA policies and procedures of San Mateo County Mental Health Services.

- B. Compliance Plan and Code of Conduct

Contractor shall read and be knowledgeable of the compliance principles contained in the Mental Health Compliance Plan and Code of Conduct. In addition, Contractor shall assure that Contractor's workforce is aware of compliance mandates, and are informed of the existence and how to use the Compliance Improvement Hotline Telephone Number (650) 573-2695.

- C. Reporting of Convictions

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

III. Goal and Objective

Goal: Clients shall be satisfied with services provided.

Objective: At least ninety percent (90%) of customer survey respondents will rate services as good or better.

Data to be collected by County.

LOVELLA CALUYA-DIAZ, M.D.
DBA BAYWOOD MEDICAL GROUP
FY 2005 – 2007
EXHIBIT B

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

I. Payments

In full consideration of the services provided by Contractor and subject to the provisions of Paragraph 3. ("Payments") of this Agreement, County shall pay Contractor in the manner described below, except that any and all payments shall be subject to the conditions contained in this Agreement.

A. Rates for Services

1. For the first (1st) year of the term of this Agreement (July 1, 2005 through June 30, 2006), County shall pay Contractor at a rate of EIGHTY-SEVEN DOLLARS AND NINETEEN CENTS (\$87.19) per hour for an average of fifteen (15) hours per week, not to exceed SIXTY-EIGHT THOUSAND EIGHT DOLLARS (\$68,008).
2. For the second (2nd) year of the term of this Agreement (July 1, 2006 through June 30, 2007), County shall pay Contractor at a rate of NINETY DOLLARS AND SIXTY-SEVEN CENTS (\$90.67) per hour for an average of fifteen (15) hours per week, not to exceed SEVENTY THOUSAND SEVEN HUNDRED TWENTY-THREE DOLLARS (\$70,723).
3. In the event Contractor receives one (1) additional Board Certification from American Board of Psychiatry and Neurology, Contractor's rate of pay will increase to NINETY-ONE DOLLARS AND FIFTY-FOUR CENTS (\$91.54) per hour, for the first (1st) year of the contract, and NINETY-FIVE DOLLARS AND TWENTY-ONE CENTS (\$95.21) per hour, for the second (2nd) year of the contract. The increase will be effective as of the first (1ST) day of the month following Contractor's receipt of such certification. Contractor will promptly provide County with proof of any such certification receipt.

4. In the event Contractor receives a second (2nd) Board Certification from American Board of Psychiatry and Neurology, Contractor's rate of pay will increase to NINETY-SIX DOLLARS AND TWELVE CENTS (\$96.12) per hour, for the first (1st) year of the contract, and NINETY-NINE DOLLARS AND NINETY-SEVEN CENTS (\$99.97) per hour, for the second (2nd) year of the contract. The increase will be effective as of the first (1ST) day of the month following Contractor's receipt of such certification. Contractor will promptly provide County with proof of any such certification receipt.
- B. In any event, the maximum amount County shall be obligated to pay for services rendered under this Agreement shall not exceed ONE HUNDRED FIFTY-TWO THOUSAND NINE HUNDRED FIFTY DOLLARS (\$152,950).
- C. Monthly Reporting
- Payment by County to Contractor shall be monthly. Contractor shall bill County on or before the tenth (10th) working day of each month for the prior month. Such invoices shall be on County provided forms or in a County approved format. County reserves the right to change the forms, format, instructions, and/or require the Contractor to modify their description of services as the County deems necessary.
- D. If County or Contractor finds that performance is inadequate, at the County's discretion, a meeting may be called to discuss the causes for the performance problem, and this Agreement may either be renegotiated, allowed to continue to end of term, or terminated pursuant to Paragraph 4 of this Agreement. Any unspent monies due to performance failure may reduce the following year's agreement, if any.
- E. Budget modifications may be approved by the Director of Health or her designee, subject to the maximum amount set forth in Paragraph B.
- F. The Director of Health is authorized to execute subsequent amendments and minor modifications not to exceed \$25,000 in aggregate and to make minor changes in the types of services and activities provided under the agreement.
- G. In the event this Agreement is terminated prior to June 30, 2007, the Contractor shall be paid for services already provided pursuant to this Agreement.
- H. Claims Certification and Program Integrity

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

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

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

Executed at _____ California, on, _____ 200_

Signed _____ Title _____

Agency _____”

ATTACHMENT I

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 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.


Lovella Caluya-Diaz, M.D.
Name of 504 Person - Type or Print

Lovella Caluya-Diaz, M.D. ~~u. P. ...~~
Name of Contractor(s) - Type or Print

~~u~~ 136 W. San Mateo Dr., Suite 101
Street Address or P.O. Box

~~u~~ San Mateo CA 94402
City, State, Zip Code

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

 MD
Signature

Psychiatrist
Title of Authorized Official

11/5/05
Date

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled 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: Lovella Caluya-Diaz, M.D., [redacted]

Contact Person: same

Address: [redacted] 136 N San Mateo Dr. St 101
[redacted] San Mateo

Phone Number: _____ Fax Number: _____

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, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
- Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- No, the Contractor does not comply.
- The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

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 4th day of November, 2005 at San Mateo CA.
(City) (State)

[Signature]
Signature
Psychiatrist
Title

Lovella DIAZ MD.
Name (Please Print)
11/5/05
Date