

1 AGREEMENT FOR FUNDING OF DESIGN AND
2 CONSTRUCTION OF THE BE WELL OC BEHAVIORAL HEALTH HUB BETWEEN
3 COUNTY OF ORANGE
4 AND
5 MIND OC
6 MARCH 1, 2019 THROUGH CERTIFICATE OF OCCUPANCY
7

8 THIS AGREEMENT FOR FUNDING OF CONSTRUCTION OF THE BE WELL BEHAVIORAL
9 HEALTH HUB (“**Agreement**”) at 265 S. Anita Drive, Orange, California, entered into this 1st day of
10 March, 2019 (“**Effective Date**”), is by and between the COUNTY OF ORANGE, a political subdivision
11 of State of California (“**COUNTY**”), and MIND OC, a California nonprofit corporation
12 (“**CONTRACTOR**”). COUNTY and CONTRACTOR may sometimes be referred to herein
13 individually as “**Party**” or collectively as “**Parties.**” This Agreement shall be administered by the
14 Orange County Health Care Agency (“**ADMINISTRATOR**”).
15

16 **W I T N E S S E T H :**

17 WHEREAS, according to the National Institute of Mental Health, 1 in 5 individuals experience
18 mental illness in a given year; and

19 WHEREAS, mental illness is a leading cause of disability, and the consequences of untreated
20 mental illness and substance use disorders often include negative financial and social impacts to police,
21 educators, emergency rooms, and businesses; and

22 WHEREAS, without treatment the consequences of mental illness and substance use disorders are
23 significant for the individual and society; and

24 WHEREAS, the ADMINISTRATOR worked in collaboration with the County Executive Office
25 Real Estate (“**CEO/Real Estate**”) to identify an office building located at 265 S. Anita Drive, Orange,
26 California; and

27 WHEREAS, through the Board of Supervisors’ leadership on February 27, 2018, the County of
28 Orange purchased an office building located at 265 S. Anita Drive in Orange (“**Property**”) for use as a
29 centralized hub behavioral health and substance use disorder services in Orange County. Access to
30 services is an identified core goal for Behavioral Health Services. A centralized hub will create
31 improved access for adults needing behavioral health and substance use disorder services; and

32 WHEREAS, CONTRACTOR is a California Nonprofit Public Benefit Corporation that provides
33 behavioral healthcare, education, and support for Orange County community, including Be Well OC,
34 through the development of a countywide system of care; and

35 WHEREAS, Be Well OC is a coalition of behavioral health stakeholders, both in private and the
36 public sector, including CalOptima, hospital systems, nonprofit, academic and faith-based organizations;
37 and

1 WHEREAS, COUNTY and CONTRACTOR intend to cause construction of a behavioral health
2 hub on the Property consisting of 265 S. Anita Drive in Orange will cause the construction and
3 installation on the Property of the materials and Improvements (“**Project**”); and

4 WHEREAS, CONTRACTOR will be responsible for the design, construction and installation of
5 appropriate and suitable improvements on the Property to accommodate the Project; and

6 WHEREAS, CONTRACTOR will be responsible for the permitting, construction and operation of
7 the Project pursuant to this Agreement and a separate Option and Master Lease between the Parties
8 (“collectively, the “**Real Property Agreements**”); and

9 WHEREAS, the overall cost of the Project construction will be distributed among three
10 stakeholders: COUNTY, CalOptima and Orange County hospitals; and

11 WHEREAS, the COUNTY has determined that competitive bidding of the construction of the
12 Project would not result in any savings of COUNTY public funds as the COUNTY’s financial
13 contribution is limited to that amount set forth herein and estimated to be one-third of the overall
14 construction costs.

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

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REFERENCED CONTRACT PROVISIONS

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Term: March 1, 2019 through Certificate of Occupancy

Maximum Obligation: \$16,600,000

Basis for Reimbursement: Funds Expended on Construction (see Exhibit A)

Payment Method: Payment Issued per Exhibit A

CONTRACTOR DUNS Number: 111922215

CONTRACTOR TAX ID Number: 82-3901590

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
Health Care Agency
Contract Services
405 West 5th Street, Suite 600
Santa Ana, CA 92701-4637

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

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I. ACRONYMS

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

- A. BHS Behavioral Health Services
- B. COI Certificate of Insurance
- C. GAAP Generally Accepted Accounting Principles
- D. OMB Federal Office of Management and Budget
- E. OPM Federal Office of Personnel Management

II. ALTERATION OF TERMS

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

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

III. CONFIDENTIALITY

A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, as they now exist or may hereafter be amended or changed.

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

IV. DELEGATION, ASSIGNMENT AND SUBCONTRACTS

A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted assignment or delegation in derogation of this paragraph shall be void.

1 B. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the
2 prior written consent of COUNTY.

3 1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to
4 any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%)
5 of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an
6 assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
7 clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
8 Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

9 2. If CONTRACTOR is a for-profit organization, any change in the business structure,
10 including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
11 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
12 change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR
13 at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
14 delegation in derogation of this subparagraph shall be void.

15 3. If CONTRACTOR is a governmental organization, any change to another structure,
16 including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board
17 of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an
18 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of
19 this subparagraph shall be void.

20 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
21 CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations
22 hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to
23 the effective date of the assignment.

24 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
25 CONTRACTOR shall provide written notification within thirty (30) calendar days to
26 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
27 governing body of CONTRACTOR at one time.

28 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
29 means of subcontracts, provided such subcontracts are approved in advance, in writing by
30 ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity
31 under subcontract, and include any provisions that ADMINISTRATOR may require.

32 1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a
33 subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract
34 subsequently fails to meet the requirements of this Agreement or any provisions that
35 ADMINISTRATOR has required.

36 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
37 pursuant to this Agreement.

1 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,
2 amounts claimed for subcontracts not approved in accordance with this paragraph.

3 4. This provision shall not be applicable to service agreements usually and customarily
4 entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional
5 services provided by consultants.

6
7 **V. EMPLOYEE ELIGIBILITY VERIFICATION**

8 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and
9 regulations regarding the employment of aliens and others and to ensure that employees, subcontractors,
10 and consultants performing work under this Agreement meet the citizenship or alien status requirements
11 set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
12 subcontractors, and consultants performing work hereunder, all verification and other documentation of
13 employment eligibility status required by federal or state statutes and regulations including, but not
14 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 *et seq.*, as they currently
15 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
16 covered employees, subcontractors, and consultants for the period prescribed by the law.

17
18 **VI. EXPENDITURE REPORT**

19 A. No later than sixty (60) calendar days following termination of this Agreement,
20 CONTRACTOR shall submit to ADMINISTRATOR, for informational purposes only, an Expenditure
21 Report for the construction services provided. Such report shall be prepared in accordance with the
22 procedure that is provided by ADMINISTRATOR and GAAP.

23 B. CONTRACTOR may be required to submit periodic Expenditure Reports throughout the term
24 of this Agreement. ADMINISTRATOR will determine the contents and format for the report.

25
26 **VII. INDEMNIFICATION AND INSURANCE**

27 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,
28 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special
29 districts and agencies for which COUNTY’s Board of Supervisors acts as the governing Board
30 (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature,
31 including but not limited to personal injury or property damage, arising from or related to the services,
32 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is
33 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the
34 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and
35 COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall
36 request a jury apportionment.

37 //

1 B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
2 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary
3 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.
4 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements
5 on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors
6 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance
7 subject to the same terms and conditions as set forth herein for CONTRACTOR.

8 C. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of \$50,000 shall
9 specifically be approved by the CEO/Office of Risk Management upon review of CONTRACTOR's
10 current audited financial report. If CONTRACTOR's SIR is approved, CONTRACTOR, in addition to,
11 and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the
12 following:

13 1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all
14 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or
15 subcontractor's performance of this Agreement, CONTRACTOR shall defend the COUNTY at its sole
16 cost and expense with counsel approved by Board of Supervisors against same; and

17 2. CONTRACTOR's duty to defend, as stated hereinabove, shall be absolute and irrespective
18 of any duty to indemnify or hold harmless; and

19 3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to
20 which the duty to defend stated above applies, and the CONTRACTOR's SIR provision shall be
21 interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.

22 D. If CONTRACTOR fails to maintain insurance as required in this Paragraph XII
23 (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, such failure shall
24 constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate
25 this Agreement.

26 E. QUALIFIED INSURER

27 1. The policy or policies of insurance must be issued by an insurer with a minimum rating of
28 A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current
29 edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred,
30 but not mandatory, that the insurer be licensed to do business in the state of California (California
31 Admitted Carrier).

32 2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of
33 Risk Management retains the right to approve or reject a carrier after a review of the company's
34 performance and financial ratings.

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

37 //

1	<u>Coverage</u>	<u>Minimum Limits</u>
2	Employee Dishonesty (Client Coverage)	\$16,600,000 per occurrence (Limit commensurate with exposure)

6 G. The Employee Dishonesty policy must cover any person who is a trustee, officer, employee,
7 administrator or manager, Board Directors and members. The County of Orange shall be the loss payee
8 on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of
9 Orange is a Loss Payee shall accompany the Certificate of Insurance.

10 H. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
11 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
12 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
13 breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate this
14 Agreement.

15 I. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
16 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
17 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to
18 adequately protect COUNTY.

19 J. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
20 CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY
21 incorporating such changes within thirty (30) calendar days of receipt of such notice, such failure shall
22 constitute a breach of CONTRACTOR's obligation hereunder and ground for termination of this
23 Agreement by COUNTY.

24 K. The procuring of such required policy or policies of insurance shall not be construed to limit
25 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of
26 this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

27 L. SUBMISSION OF INSURANCE DOCUMENTS

28 1. The COI and endorsements shall be provided to COUNTY as follows:
29 a. Prior to the start date of this Agreement.
30 b. No later than the expiration date for each policy.
31 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
32 changes to any of the insurance types as set forth in Subparagraph G, above.

33 2. The COI and endorsements shall be provided to the COUNTY at the address as specified in
34 the Referenced Contract Provisions of this Agreement.

35 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance
36 provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall
37 have sole discretion to impose one or both of the following:

1 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
2 pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the
3 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
4 submitted to ADMINISTRATOR.

5 b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late
6 COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and
7 CONTRACTOR, until such time that the required COI and endorsements that meet the insurance
8 provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

9 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from
10 CONTRACTOR's monthly invoice.

11 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any
12 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs
13 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.
14

15 **VIII. INSPECTIONS AND AUDITS**

16 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
17 of the State of California, the Secretary of the United States Department of Health and Human Services,
18 the Comptroller General of the United States, or any other of their authorized representatives, shall have
19 access to any books, documents, and records, including but not limited to, financial statements, general
20 ledgers, relevant accounting systems, medical and client records, of CONTRACTOR that are directly
21 pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or conducting an
22 audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth
23 in the Records Management and Maintenance Paragraph of this Agreement. Such persons may at all
24 reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the
25 premises in which they are provided. COUNTY and other governmental authorities having oversight
26 over the funds expended hereunder shall have the right at any reasonable times and on reasonable prior
27 notice to examine and audit said books and records, without restriction, for the purpose of determining
28 the compliance of CONTRACTOR with the terms of this Agreement. Except in the event of a dispute
29 between the Parties and otherwise except as required by applicable law, including without limitation the
30 PRA (Government Code Sections 6250 *et seq.*), CONTRACTOR's books and records shall remain
31 confidential. No contingency based auditor shall be permitted to participate in such audit.

32 B. CONTRACTOR shall actively participate and cooperate with any person specified in
33 Subparagraph A. above in any audit, evaluation or monitoring of the services provided pursuant to this
34 Agreement, and shall provide the above-mentioned persons adequate office space to conduct such
35 evaluation or monitoring.

36 C. AUDIT RESPONSE

37 //

1 1. Following an audit report, in the event of non-compliance with applicable laws and
2 regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement
3 as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement
4 appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in
5 writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR. In the event
6 that the Agreement is terminated, any unexpended funds shall be reimbursed within ten (10) days and no
7 further payments will be made hereunder. Additionally, any funds hereunder not expended pursuant to
8 the terms of this Agreement shall be reimbursed within ten (10) days.

9 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
10 by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said
11 funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of
12 the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement
13 is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
14 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
15 reimbursement due COUNTY.

16 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file
17 with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as
18 may be required during the term of this Agreement.

19 E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within
20 fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management,
21 financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the
22 cost of such operation or audit is reimbursed in whole or in part through this Agreement.

23
24 **IX. LICENSES AND LAWS**

25 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
26 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,
27 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
28 required by the laws, regulations and requirements of the United States, the State of California,
29 COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify
30 ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the
31 pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers
32 and exemptions. Said inability shall be cause for termination of this Agreement.

33 **B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

34 1. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days
35 of the award of this Agreement:

36 a. In the case of an individual contractor, his/her name, date of birth, social security
37 number, and residence address;

1 b. In the case of a contractor doing business in a form other than as an individual, the
2 name, date of birth, social security number, and residence address of each individual who owns an
3 interest of ten percent (10%) or more in the contracting entity;

4 c. A certification that CONTRACTOR has fully complied with all applicable federal and
5 state reporting requirements regarding its employees;

6 d. A certification that CONTRACTOR has fully complied with all lawfully served Wage
7 and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

8 2. Failure of CONTRACTOR to timely submit the data and/or certifications required by
9 Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting
10 requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings
11 Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement;
12 and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute
13 grounds for termination of this Agreement.

14 3. It is expressly understood that this data will be transmitted to governmental agencies
15 charged with the establishment and enforcement of child support orders, or as permitted by federal
16 and/or state statute.

17
18 **X. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

19 A. Any written information or literature, including educational or promotional materials,
20 distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related
21 to this Agreement must be approved at least thirty (30) days in advance and in writing by
22 ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written
23 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,
24 and electronic media such as the Internet.

25 B. Any advertisement through radio, television broadcast, or the Internet, for educational or
26 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this
27 Agreement must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

28 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly
29 available social media sites) in support of the services described within this Agreement,
30 CONTRACTOR shall develop social media policies and procedures and have them available to
31 ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all
32 forms of social media used to either directly or indirectly support the services described within this
33 Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as
34 they pertain to any social media developed in support of the services described within this Agreement.
35 CONTRACTOR shall also include any required funding statement information on social media when
36 required by ADMINISTRATOR.

37 //

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

3
4 **XI. MAXIMUM OBLIGATION**

5 Subject to the subsequent execution of the Real Property Agreements by the Parties, and the terms
6 and conditions set forth herein, including without limitation on Exhibit A attached hereto, COUNTY
7 shall provide CONTRACTOR with the County Financial Contribution, as that term is defined herein,
8 for the completion of the Work to provide Improvements for the Project. The County Financial
9 Contribution shall be applied by CONTRACTOR only toward approved work to complete the
10 improvements and shall be disbursed in accordance with the provisions for disbursement as set forth in
11 Exhibit A. In no event shall any portion of the County Financial Contribution be used for any purpose
12 other than to complete the work. Any and all costs in excess of the County Financial Contribution
13 required to complete the construction of the work shall be the sole and exclusive obligation and
14 responsibility of CONTRACTOR. The Maximum Obligation of COUNTY for services provided in
15 accordance with this Agreement is as specified in the Referenced Contract Provisions of this
16 Agreement.

17
18 **XII. MINIMUM WAGE LAWS**

19 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
20 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
21 federal or California Minimum Wage to all its employees that directly or indirectly provide services
22 pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that
23 all its contractors or other persons providing services pursuant to this Agreement on behalf of
24 CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum
25 Wage.

26 B. CONTRACTOR shall comply and verify that its contractors comply with all other federal and
27 State of California laws for minimum wage, overtime pay, record keeping, and child labor standards
28 pursuant to providing services pursuant to this Agreement.

29 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
30 where applicable, shall comply with the prevailing wage and related requirements, as provided for in
31 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
32 State of California (§§1770, *et seq.*), as it now exists or may hereafter be amended.

33
34 **XIII. NONDISCRIMINATION**

35 **A. EMPLOYMENT**

36 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not
37 unlawfully discriminate against any employee or applicant for employment because of his/her race,

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

9 2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or
10 applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or
11 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection
12 for training, including apprenticeship.

13 3. CONTRACTOR shall not discriminate between employees with spouses and employees
14 with domestic partners, or discriminate between domestic partners and spouses of those employees, in
15 the provision of benefits.

16 4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for
17 employment, notices from ADMINISTRATOR and/or the United States Equal Employment
18 Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

19 5. All solicitations or advertisements for employees placed by or on behalf of
20 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration
21 for employment without regard to race, religious creed, color, national origin, ancestry, physical
22 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender
23 identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements
24 shall be deemed fulfilled by use of the term EOE.

25 6. Each labor union or representative of workers with which CONTRACTOR and/or
26 subcontractor has a collective bargaining agreement or other contract or understanding must post a
27 notice advising the labor union or workers' representative of the commitments under this
28 Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places available to
29 employees and applicants for employment.

30
31 **XIV. NOTICES**

32 A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements
33 authorized or required by this Agreement shall be effective:

34 1. When written and deposited in the United States mail, first class postage prepaid and
35 addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed
36 by ADMINISTRATOR;

37 //

XVI. RESEARCH AND PUBLICATION

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

XVII. SEVERABILITY

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

XVIII. SPECIAL PROVISIONS

A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

- 1. Making cash payments to intended recipients of services through this Agreement.
- 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
- 3. Fundraising.
- 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s staff, volunteers, or members of the Board of Directors or governing body.
- 5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing body for expenses or services.
- 6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.
- 7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
- 8. Severance pay for separating employees.
- 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.

B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

- 1. Funding travel or training (excluding mileage or parking).

//

1 CONTRACTOR provides evidence of timely and substantial progress towards meeting the goals of the
2 corrective action plan.

3 B. COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence
4 of any of the following events:

- 5 1. The loss by CONTRACTOR of legal capacity.
- 6 2. Cessation of services.
- 7 3. The delegation or assignment of CONTRACTOR’s services, operation or administration to
8 another entity without the prior written consent of COUNTY.

9 C. CONTINGENT FUNDING

- 10 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
 - 11 a. The continued availability of federal, state and county funds for reimbursement of
12 COUNTY’s expenditures, and
 - 13 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
14 approved by the Board of Supervisors.

15 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,
16 terminate or renegotiate this Agreement upon thirty (30) calendar days’ written notice given
17 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated
18 funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

19 D. In the event this Agreement is suspended or terminated prior to the completion of the term as
20 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole
21 discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced
22 term of the Agreement and require a refund of remaining funds.

23 E. In the event this Agreement is terminated pursuant to Subparagraphs A. and B. above,
24 CONTRACTOR shall do the following:

- 25 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
26 is consistent with recognized standards of prudent business practice.
- 27 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
28 performance during the remaining contract term.
- 29 3. Until the date of termination, continue to provide the same level of service required by this
30 Agreement.
- 31 4. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and
32 supplies purchased with funds provided by COUNTY.
- 33 5. Cancel outstanding commitments covering the procurement of materials, supplies,
34 equipment, and miscellaneous items, as well as outstanding commitments which relate to construction
35 services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for
36 settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment
37 which shall be subject to written approval of ADMINISTRATOR.

1 F. The rights and remedies of COUNTY provided in this Article shall not be exclusive, and are in
2 addition to any other rights and remedies provided by law or under this Agreement.

3
4 **XXII. THIRD PARTY BENEFICIARY**

5 Neither Party hereto intends that this Agreement shall create rights hereunder in third parties
6 including, but not limited to, any subcontractors or any clients provided services pursuant to this
7 Agreement.

8
9 **XXIII. WAIVER OF DEFAULT OR BREACH**

10 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
11 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
12 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
13 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
14 Agreement.

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1 IN WITNESS WHEREOF, the Parties have executed this Agreement, in the County of Orange,
2 State of California.

3
4 MIND OC
5

6
7
8 BY: _____ DATED: _____
9

10 TITLE: _____
11

12 BY: _____ DATED: _____
13

14 TITLE: _____
15
16
17

18 COUNTY OF ORANGE
19

20
21 BY: _____ DATED: _____
22

23 HEALTH CARE AGENCY
24

25 APPROVED AS TO FORM
26 OFFICE OF THE COUNTY COUNSEL
27 ORANGE COUNTY, CALIFORNIA

28 BY:  _____ DATED: 1/23/2019
29
30

31
32
33
34 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
36 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
37 or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her
signature alone is required by ADMINISTRATOR.

1 EXHIBIT A
2 TO AGREEMENT FOR FUNDING OF
3 CONSTRUCTION OF THE BE WELL BEHAVIORAL HEALTH HUB BETWEEN
4 COUNTY OF ORANGE
5 AND
6 MINDOC
7 MARCH 1, 2019 THROUGH CERTIFICATE OF OCCUPANCY
8

9 **I. COUNTY FINANCIAL CONTRIBUTION**

10 A. The overall cost of the Project construction will be distributed among three stakeholders:
11 COUNTY, CalOptima and Orange County hospitals. The following County Financial Contribution sets
12 forth COUNTY’s financial responsibility and contribution for the cost of Project construction, with a
13 full construction budget to be approved by the COUNTY.

14
15 COUNTY’S CONTRIBUTION FOR ADMINISTRATIVE
16 AND CONSTRUCTION COSTS: \$16,600,000
17

18 **II. DEFINITIONS**

19 A. The Parties agree that the following terms shall have and the following definitions for purposes
20 of this Agreement.

21 1. “Chief Real Estate Officer” means the Chief Real Estate Officer, County Executive Office,
22 County of Orange, or designee, or upon written notice to CONTRACTOR, such other person as may be
23 designated by the Board of Supervisors.

24 2. “Construction Budget” means the detailed line-item budget for all hard and soft costs to be
25 incurred by CONTRACTOR in connection with the design, construction and installation of appropriate
26 and suitable Improvements on the Property to accommodate the Project as approved by the
27 ADMINISTRATOR and the Chief Real Estate Officer prior any construction being performed on the
28 Property.

29 3. “Construction Drawings” means the set of construction, landscaping and engineering
30 drawings prepared by or for the architect of record for the Improvements, approved by Chief Real Estate
31 Officer prior to any construction being performed on the Property, as same may be revised from time to
32 time in accordance with the Real Property Agreements.

33 4. “CONTRACTOR’s Leasehold Interest” means the leasehold interest created by the Master
34 Lease between the CONTRACTOR and COUNTY.

35 5. “Improvements” means and includes all buildings (including above-ground and below
36 ground portions thereof, and all foundations and supports), building systems and equipment (such as
37 HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs,

1 gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever
2 now or hereafter made or constructed on the Property by the CONTRACTOR pursuant to this
3 AGREEMENT and the Real Property Agreements.

4 6. "Option and Master Lease" means the separate Option Agreement and Master Lease
5 Agreement by which the CONTRACTOR takes leasehold possession of the Property for permitting,
6 construction and operational purposes.

7 7. "Project" means the Be Well Behavioral Health Hub at 265 South Anita Drive, Orange, CA.

8 8. "Real Property Agreements" means the separate Option and Master Lease agreement
9 between the COUNTY and CONTRACTOR taken together, to be subsequently executed.

10 9. "Work" means CONTRACTOR's construction activity with respect to the Improvements in
11 compliance with the Construction Budget, including permitted future changes, alterations and
12 renovations thereto and also including, without limiting the generality of the foregoing, site preparation,
13 landscaping, installation of utilities, street construction or improvement and grading or filling in or on
14 the Property.

15
16 **III. PAYMENTS**

17 A. Prior to CONTRACTOR'S commencement of the Work, CONTRACTOR shall, in accordance
18 with Section 6.E. of the Option, provide COUNTY with evidence that CONTRACTOR has the financial
19 resources to pay for that portion of the Project costs in excess of the County Financial Contribution
20 ("CONTRACTOR'S Responsible Portion"). Such evidence may include, without limitation, copies of
21 the following with respect to the Work: (a) all contracts and purchase orders with such third party
22 payees; (b) all invoices and payment applications received from such third party payees; and (c)
23 evidence of payment of such invoices and payment applications together with unconditional lien
24 waivers received signed by such third party payees to acknowledge payment of amounts owed under
25 such invoices and payment applications; or any other satisfactory evidence as approved by the Chief
26 Real Estate Officer. If any revisions, changes, or substitutions shall be made to the Final Plans and
27 Specifications for the Work, then any additional costs which arise as a result of such revisions, changes
28 or substitutions shall increase the amount of CONTRACTOR'S Responsible Portion.

29 B. COUNTY shall pay CONTRACTOR the County Financial Contribution in full on July 15,
30 2019, or after CONTRACTOR provides all required evidence of having the financial resources to pay
31 for the CONTRACTOR'S Responsible Portion as described above, whichever is later, for the actual
32 costs of providing construction services described hereunder.

33
34 **IV. CONSTRUCTION**

35 A. Not later than 90 (ninety) days following the Commencement Date of the Option and Master
36 Lease between the Parties, CONTRACTOR will cause the construction and installation on the Property
37 of the materials and Improvements that are more particularly described on the Construction Drawings,

1 substantially in accordance with the Construction Drawings and all construction terms of the Option and
2 Master Lease, including Article V (CONSTRUCTION OF IMPROVEMENTS), contained therein. If
3 CONTRACTOR retains a contractor or subcontractor to perform the Work, CONTRACTOR
4 acknowledges and agrees that the contractor or subcontractor shall perform the Work and such
5 performance shall, in all respects, be subject to the terms and conditions of the Real Property
6 Agreements, and will also be subject to the following conditions:

7 1. Contractor/Subcontractor Requirements. The contractors or subcontractors retained by
8 CONTRACTOR to perform the Work shall be duly licensed in California and shall be subject to
9 COUNTY's prior written approval, which shall approval not be unreasonably withheld.

10 2. Costs and Expenses of Work. CONTRACTOR will promptly pay all costs and expenses
11 arising out of the performance of the Work (including the costs of permits) and will furnish COUNTY
12 with evidence of payment on request. CONTRACTOR will provide COUNTY with ten (10) days' prior
13 written notice before commencing any Work. On completion of Work, CONTRACTOR will deliver to
14 COUNTY (i) a release and waiver of lien executed by each contractor, subcontractor, and material
15 supplier concerned with Work, and (ii) a certificate of substantial completion issued by
16 CONTRACTOR's architect. If any lien is filed against the Property or against CONTRACTOR's
17 Leasehold Interest, CONTRACTOR will obtain, within ten (10) days after the filing, the release or
18 discharge of that lien. If CONTRACTOR fails to do so, COUNTY may obtain the release or discharge
19 of the lien and CONTRACTOR must indemnify and hold harmless the COUNTY for the costs,
20 including reasonable attorney fees, together with interest from the date of demand.

21 3. Indemnification. CONTRACTOR will indemnify, defend (with counsel satisfactory to
22 COUNTY), and hold COUNTY harmless from all suits, claims, actions, loss, cost, or expense
23 (including claims for workers' compensation, attorney fees, and costs) based on personal injury or
24 property damage or contract claims (including, but not limited to, claims for breach of warranty) arising
25 from the performance of the Work. CONTRACTOR will repair or replace (or, at COUNTY's election,
26 reimburse COUNTY for the cost of repairing or replacing) any portion of the improvements or item of
27 COUNTY's equipment or any of COUNTY's real or personal property damaged, lost, or destroyed in the
28 performance of the Work. This obligation shall be in addition to the CONTRACTOR's obligations set
29 forth in Article V (INDEMNIFICATION AND INSURANCE) of this Agreement.

30 4. Insurance. CONTRACTOR's contractors will obtain and provide COUNTY with
31 certificates evidencing insurance as required by the Agreement and the Real Property Agreements and in
32 accordance with the provisions of Article V (INDEMNIFICATION AND INSURANCE) of this
33 Agreement.

34 5. Rules and Regulations. CONTRACTOR and CONTRACTOR's contractors will comply
35 with any other rules, regulations, or reasonable requirements that COUNTY may impose.
36 CONTRACTOR's agreement with CONTRACTOR's contractors will require each contractor to provide

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1 daily cleanup of the construction area to the extent that cleanup is necessitated by the performance of the
2 Work.

3 6. Early Entry. COUNTY at its sole discretion will permit entry of contractors into the
4 Property for the purposes of performing the Work, prior to the Effective Date, but only at the times that
5 COUNTY deems feasible under the circumstances. This license to enter before the Effective Date is
6 expressly conditioned on the contractor retained by CONTRACTOR working in harmony and not
7 interfering with the workers, mechanics, and contractors of COUNTY or of any other tenant in the
8 project. If at any time the entry or work by CONTRACTOR's contractor causes any interference,
9 permission to enter may be withdrawn by COUNTY immediately on written notice to CONTRACTOR.

10 7. Risk of Loss. All materials, work, installations, and decorations of any nature brought on or
11 installed on the Property before the Effective Date will be at CONTRACTOR's risk, and neither
12 COUNTY nor any party acting on COUNTY's behalf will be responsible for any damage, loss, or
13 destruction.

14 8. Condition of Work. All Work performed by CONTRACTOR or CONTRACTOR's
15 subcontractors will be performed in a good and proper manner, will be free from defects in design,
16 materials, and workmanship, and will be completed in strict compliance with the Construction
17 Drawings.

18 B. Nothing contained herein will make or constitute CONTRACTOR or CONTRACTOR's
19 subcontractors as the agent(s) of COUNTY.

20 C. CONTRACTOR has designated Marshall Moncrief as its sole representative with respect to the
21 matters set forth in this Agreement, who shall have full authority and responsibility to act on behalf of
22 CONTRACTOR as required in this Agreement.

23 D. The County Financial Contribution shall be limited to a one-time payment in the amount up to,
24 but not to exceed, Sixteen Million Six Hundred Thousand dollars and 00/100 (\$16,6000,000) to
25 reimburse CONTRACTOR for approved expenditures toward Work related to the Improvements. The
26 payment is intended to be the full amount committed by COUNTY for construction of the Project. In no
27 event shall COUNTY be obligated to pay or make disbursements for the Work pursuant to this Master
28 Lease or otherwise in a total amount which exceeds the County Financial Contribution, nor shall
29 CONTRACTOR be entitled to receive (whether in cash, credit or otherwise) any portion of the County
30 Financial Contribution that is not used for the Work.

31 E. CONTRACTOR shall promptly return any excess funds or overpayment within forty-five (45)
32 business days after the overpayment is verified by the ADMINISTRATOR.

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