



AMENDMENT NO. 3
TO
CONTRACT NO. MA-042-20011529
FOR
PSYCHIATRIC AND BASIC MEDICAL SERVICES

This Amendment ("Amendment No. 3") to Contract No. MA-042-20011529 for Psychiatric and Basic Medical Services is made and entered into on or about July 1, 2023 ("Effective Date") between CEP AMERICA-PSYCHIATRY, PC DBA VITIVITY, a California professional corporation. ("Contractor"), with a place of business at 2100 Powell St., Suite 400, Emeryville, CA 94608, and the County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency, with a place of business at 405 W. 5th St., Ste. 600, Santa Ana, CA 92701. Contractor and County may sometimes be referred to individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, on May 19, 2020, the Parties executed Contract No. MA-042-20011529 for Psychiatric and Basic Medical Services, effective July 1, 2020, through June 30, 2022, in an amount not to exceed \$5,428,102, renewable for three additional one-year periods ("Contract"); and

WHEREAS, on or about November 1, 2021, the Parties executed Amendment No. 1 to exercise the contingency contract cost increase to increase the Period Two Amount Not To Exceed by \$23,431 from \$2,714,051 to \$2,738,482, for a revised cumulative total amount not to exceed \$5,453,533; and

WHEREAS, the Parties discovered an administrative error with the Period Two amount not to exceed and the revised cumulative total amount not to exceed stated in Amendment No. 1; and

WHEREAS, on or about May 24, 2022, the Parties executed Amendment No. 2 to modify the Budget paragraph in Exhibit A of the Contract and to increase the Period Three Amount Not To Exceed by \$2,927,515 for a revised cumulative total amount not to exceed \$8,379,048; and

WHEREAS, the Parties now desire to enter into this Amendment No. 3 to renew the Contract for two years, and amending Reference Contract Provisions, Paragraph XIV, and Exhibit A of the Contract as sited below; and

NOW THEREFORE, the Parties agree to amend the Contract as follows:

1. The Contract's Period Four Amount Not to Exceed \$3,091,610, and Period Five Amount Not to Exceed \$3,261,049, for a new total amount not to exceed \$14,731,707.
2. The Contract is renewed for a term of two (2) years, effective July 1, 2023 through June 30, 2025.

3. Referenced Contract Provisions, Amount Not to Exceed provision, of the Contract are deleted in their entirety and replaced with the following:

“Term: July 1, 2020 through June 30, 2025

Period One means the period from July 1, 2020 through June 30, 2021

Period Two means the period from July 1, 2021 through June 30, 2022

Period Three means the period from July 1, 2022 through June 30, 2023

Period Four means the period from July 1, 2023 through June 30, 2024

Period Five means the period from July 1, 2024 through June 30, 2025

“Amount Not To Exceed:

Period One Amount Not To Exceed:	\$ 2,714,051
Period Two Amount Not To Exceed:	2,737,482
Period Three Amount Not To Exceed:	2,927,515
Period Four Amount Not To Exceed:	3,091,610
<u>Period Five Amount Not To Exceed</u>	<u>3,261,049</u>
TOTAL AMOUNT NOT TO EXCEED:	\$ 14,731,707”

4. Paragraph XIV, Insurance and Indemnification, of the Contract is deleted in its entirety and replaced with the following:

“XIV. INDEMNIFICATION AND INSURANCE

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

B. Prior to the provision of services under this Contract, CONTRACTOR agrees to carry all required insurance at CONTRACTOR’s expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Contract have been complied with. CONTRACTOR agrees to keep such insurance coverage current, provide Certificates of Insurance, and endorsements to COUNTY during the entire term of this Contract.

C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall be covered under CONTRACTOR’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from CONTRACTOR under this Contract. It is the obligation of CONTRACTOR to provide notice of the insurance

requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CONTRACTOR through the entirety of this Contract for inspection by COUNTY representative(s) at any reasonable time.

D. All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIRs in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by County's Risk Manager, or designee. COUNTY reserves the right to require current audited financial reports from CONTRACTOR. If CONTRACTOR is self-insured, CONTRACTOR shall indemnify COUNTY for any and all claims resulting or arising from CONTRACTOR'S services in accordance with the indemnity provision stated in this Contract. If CONTRACTOR'S SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

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

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

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

E. If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this Contract, COUNTY may terminate this Contract.

F. QUALIFIED INSURER

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and A-VII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com).

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

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned, and hired vehicles (4 passengers or less)	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Network Security & Privacy Liability	\$1,000,000 per claims -made
Professional Liability	\$1,000,000 per claims -made or Occurrence \$1,000,000 aggregate

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

H. REQUIRED COVERAGE FORMS

1. The Commercial General Liability coverage shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01 CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

I. REQUIRED ENDORSEMENTS

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

a. An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

2. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

a. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

b. A primary and non-contributing endorsement evidencing that CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

J. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

K. All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

L. CONTRACTOR shall provide thirty (30) calendar days prior written notice to COUNTY of any policy cancellation or non-renewal and ten (10) calendar days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which COUNTY may suspend or terminate this Contract.

M. If CONTRACTOR's Professional Liability and Network Security & Privacy Liability are "Claims -Made" policy(ies), CONTRACTOR shall agree to the following:

1. The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.

2. Insurance must be maintained, and evidence of insurance must be provided, for at least three (3) years after expiration or earlier termination of the Contract.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.

N. The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

O. Insurance certificates should be forwarded to the department address listed in the Referenced Contract Provisions of this Agreement.

P. If CONTRACTOR does not provide the insurance certificates and endorsements within seven (7) calendar days of notification by COUNTY, COUNTY may immediately terminate this Agreement for cause

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

R. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not provide acceptable Certificate of Insurance and endorsements to COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

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

5. Exhibit A, Paragraph II, Budget, subparagraph A. of the Contract is deleted in its entirety and replaced with the following:

“A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph of this Exhibit A to the Contract and the following budget, which is set forth for informational purposes only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

	PERIOD <u>FOUR</u>	PERIOD <u>FIVE</u>	<u>TOTAL</u> (including Periods 1-3)
ADMINISTRATIVE COST			
Salaries	\$ 283,988	\$ 299,427	\$ 1,354,780
Benefits	3,477	3,666	16,585
Management Fees	<u>279,500</u>	<u>300,463</u>	<u>\$ 1,339,962</u>
SUBTOTAL	\$ 566,964	\$ 603,555	\$2,711,327
ADMINISTRATIVE COSTS			
PROGRAM COST			
Salaries	\$2,049,087	\$2,151,509	\$7,822,612
Benefits	301,805	316,893	1,153,422
Services and Supplies	<u>164,195</u>	<u>178,973</u>	<u>607,168</u>
SUBTOTAL PROGRAM COST	\$2,515,087	\$2,647,375	\$11,968,733
MAT Services	<u>\$ 9,559</u>	<u>\$ 10,120</u>	<u>\$ 51,645</u>
TOTAL GROSS COST	\$3,091,610	\$3,261,049	\$14,731,707
REVENUE			
MHSA	<u>\$3,091,610</u>	<u>\$3,261,049</u>	<u>\$14,731,707</u>
TOTAL REVENUE	\$3,091,610	\$3,261,049	\$14,731,707
TOTAL AMOUNT NOT TO EXCEED	\$3,091,610	\$3,261,049	\$14,731,707”

6. Exhibit A, Paragraph III. Payments, of the Contract is deleted in its entirety and replaced with the following:

“III. PAYMENTS

A. COUNTY shall pay CONTRACTOR monthly, in arrears and in response to invoices, at the provisional amount of \$257,634 per month for Period Four and \$271,754 per month for Period Five. All payments are interim payments only and are subject to Final Settlement in accordance with the Cost Report Paragraph of the Contract for which CONTRACTOR shall be reimbursed for the actual cost of providing the services hereunder; provided, however, the total of such payments does not exceed the Amount Not To Exceed as noted in the Referenced Contract Provisions of the Contract and provided further, CONTRACTOR's costs are reimbursable pursuant to COUNTY, State and/or Federal regulations. ADMINISTRATOR may, at its discretion, pay supplemental invoices for any month for which the provisional amount specified above has not been fully paid. COUNTY will pay for x-waiver training for Vituity medical staff as new staff are onboarded in order for after-hours Medication Assisted Treatment (MAT) to be provided to County clients. The training will consist of approximately eight hours of training for doctors and 24 hours of training for Nurse Practitioners (NPs) and Physician Assistants (PAs). Providers will be paid at their hourly rate of \$226.80/hour for doctors and \$138.60/hour for NPs/PAs. Providers will be paid a quarter of the hourly rate for each 15 minutes of MAT provided to COUNTY clients afterhours, on Holidays and weekends. The rate for doctors is \$56.70 and \$34.65 for NPs/PAs per each 15 minutes of MAT service.

1. In support of the monthly invoice, CONTRACTOR shall submit an Expenditure and Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Contract. ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the provisional amount payments exceed the actual cost of providing services, ADMINISTRATOR may reduce COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and the year-to-date actual cost incurred by CONTRACTOR.

3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the provisional amount payments are less than the actual cost of providing services, ADMINISTRATOR may authorize an increase in the provisional amount payment to CONTRACTOR by an amount not to exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and the year-to-date actual cost incurred by CONTRACTOR.

B. CONTRACTOR's invoice shall be on a form approved or supplied by COUNTY and provide such information as is required by ADMINISTRATOR. Invoices are due the tenth (10th) day of each month. Invoices received after the due date may not be paid within the same month. Payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice.

C. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records and records of services provided.

D. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the Contract, provided that ADMINISTRATOR has provided CONTRACTOR with notice of such failure and only until CONTRACTOR cures such failure.

E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of the Contract, except as may otherwise be provided under the Contract, or specifically agreed upon in a subsequent contract.

F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Payments Paragraph of this Exhibit A to the Contract.”

7. This Amendment No. 3 modifies the Contract, including all previous amendments, only as expressly set forth herein. Wherever there is a conflict in the terms or conditions between this Amendment No. 3 and the Contract, including all previous amendments, the terms and conditions of this Amendment No. 3 prevail. In all other respects, the terms and conditions of the Contract, including all previous amendments, not specifically changed by this Amendment No. 3; remain in full force and effect.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 3. If Contractor is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, the President, or any Vice President; 2) the second signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

Contractor: CEP AMERICA-PSYCHIATRY, PC DBA VITUITY

David Birdsall, MD.

VP & Secretary

Print Name
DocuSigned by:

Title

David Birdsall, MD, VP & Secretary

4/21/2023

D792F4A91A8644F...
Signature

Date

County of Orange, a political subdivision of the State of California

Purchasing Agent/Designee Authorized Signature:

William Norsetter

Title

Print Name

Signature

Date

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

Mark Servino

Deputy County Counsel

Print Name
DocuSigned by:

Title

Mark Servino

4/21/2023

45C3A58FFA0F4E6...
Signature

Date