

AGREEMENT FOR SERVICES #167-169-M-E2011  
Primary Intervention Program

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THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as COUNTY) and Black Oak Mine Unified School District, whose principal place of business is 6540 Wentworth Springs Road, Georgetown, CA 95634 (hereinafter referred to as CONTRACTOR);

RECITALS

WHEREAS, COUNTY has determined that it is necessary to obtain a contractor to provide the Primary Intervention Program to elementary school children in the Georgetown area; and

WHEREAS, CONTRACTOR has represented to COUNTY that it is specially trained, experienced, expert and competent to perform the special services required hereunder and COUNTY has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

WHEREAS, COUNTY has determined that the provision of these services provided by CONTRACTOR is in the public's best interest, and that these services are more economically and feasibly performed by outside independent contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, COUNTY and CONTRACTOR mutually agree as follows:

**Article I. SCOPE OF SERVICES**

Section 1.01 The Primary Intervention Program (PIP) is a school-based collaboration between the Black Oak Mine Unified School District (BOMUSD) and the County Health Services Department, Mental Health Division (MHD). Teachers and a screening team comprised of school district staff will identify children who are “at risk” of developing emotional problems, as indicated by their school adjustment difficulties, who may be considered appropriate for PIP intervention. In the event that a child is identified as “at risk” but found to be not appropriate for PIP intervention, alternative recommendations will be provided and the screening team will partner with the referring teacher and family to find appropriate services. For children identified as appropriate for PIP intervention, trained PIP Aides will provide program services in the form of one-on-one, non-directive play for approximately 30-45 minutes per week for up to 15 weeks.

The target population of the PIP is early elementary school children experiencing classroom difficulties that may be a function of family stress.

The program provides screening to identify children with mild aggression, withdrawal, and/or learning difficulties. It is a mental health promotion model, with behavioral control and adaptive assertiveness among the outcomes achieved.

Section 1.02 The PIP program staff will:

- (a) Serve BOMUSD students in primary grades who are experiencing mild to moderate school adjustment difficulties with PIP school-based services;
- (b) Ensure that supervised and trained PIP Aides provide weekly one-on-one, non-directive play sessions with selected students;
- (c) Ensure that students are selected for program participation through a systematic selection process that includes completion of a standardized assessment tool, marked Exhibit A, “Walker-McConnell Scale (WMS),” incorporated herein and made by reference a part hereof, and input from school-based mental health professionals and teachers;
- (d) Encourage the involvement of parents/guardians and teaching staff to build alliances to promote student’s mental health and social and emotional development;
- (e) Ensure that parental consent is obtained for student participation; and,
- (f) Provide the service delivery reports as specified in Article I, “Scope of Services,” Section 1.04.

Section 1.03 CONTRACTOR will provide the appropriate space at two (2) school sites (Georgetown and Northside elementary schools) for this project, as well as up to four (4) PIP Aides trained in the screening and non-directive play sessions, and a PIP Coordinator to manage the collection, analysis and submission of program data. Appropriately sized play rooms will be provided, along with supplies, telephone, and work stations.

In accordance with the foregoing description of services, CONTRACTOR agrees to furnish personnel and facilities necessary to provide the services further described in Exhibit B, marked "Program Description," incorporated herein and made by reference a part hereof.

Section 1.04 Report and Other Documentation and Submission Timeframes – It is understood and agreed that access to CONTRACTOR's data and information is essential for COUNTY, and that CONTRACTOR shall cooperate in identifying and providing this data and information to COUNTY. The CONTRACTOR shall provide service delivery reports on a timely basis, including but not limited to the following:

(a) Exhibit C, "BOMUSD PIP Client Registration Form," incorporated herein and made by reference a part hereof, is due thirty (30) days after the end of each fiscal quarter. This confidential document shall be submitted electronically to COUNTY through a HIPAA compliant confidential server. CONTRACTOR will be given access to this confidential server by COUNTY.

(b) Exhibit D, "BOMUSD PIP Monthly Service Delivery Report," incorporated herein and made by reference a part hereof, shall be completed by CONTRACTOR staff and submitted to the MHD on a monthly basis with the invoice. This form may be modified to incorporate improvements in design over time by mutual consent of the parties hereto.

(c) Exhibit E, "BOMUSD PIP Year End Progress Report," incorporated herein and made by reference a part hereof, shall be submitted to the MHD annually (due dates vary based on the State Department of Mental Health's deadlines).

In addition, Exhibit A shall be administered by the CONTRACTOR and used to assess students two (2) times; at the time the student is selected to enter the program, and again when the student exits the program. Data from the WMS pre and post test scores will be provided to the COUNTY and analyzed as a part of Exhibit E.

Section 1.05 Collaboration – It is understood and agreed that CONTRACTOR's performance shall be monitored and evaluated on an ongoing basis. In providing MHSA-funded services, CONTRACTOR serves as a component of the MHD system of care. Communication and collaboration are critical to effective service delivery. CONTRACTOR will participate in service collaboration meetings as needed with COUNTY for the purposes of service integration, quality improvement, and to review the CONTRACTOR's activities under this Agreement.

CONTRACTOR shall meet quarterly with MHD staff for the purposes of: 1) reviewing invoices, 2) reviewing data requirements and submissions and 3) reporting on program progress including program sustainability.

Section 1.06 Program Sustainability – Pursuant to the approved FY 2009/10 Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Plan, it is understood that the Primary Intervention Program (PIP) was approved as a pilot and was intended to provide an opportunity to use MHSA funds to incubate efforts in targeted areas identified within the County. While the continued use of this model and the locations for the use of MHSA funding may be re-evaluated, CONTRACTOR will make every reasonable effort to identify and secure

other funding sources to sustain the PIP in subsequent fiscal years after the termination of this Agreement.

**Article II. PERFORMANCE REQUIREMENTS**

Section 2.01 Code of Conduct – CONTRACTOR shall establish a written Code of Conduct for employees which shall include, but not be limited to, standards related to drugs and alcohol; staff relations with clients; prohibition of sexual relations with clients; and conflict of interest. Prior to providing any services pursuant to this Agreement, all employees to provide such services shall agree, in writing, to maintain the standards set forth in the Code of Conduct. CONTRACTOR shall maintain such written agreements and shall make them available to COUNTY Contract Administrator upon request. A copy of the Code of Conduct shall be provided to each client's parent.

Section 2.02 Cultural Competency – CONTRACTOR shall provide these services in an atmosphere of cultural competency, offering services that will meet the needs of participants from different cultural backgrounds. It is expected that the CONTRACTOR will at all times have the internal capacity to provide the services called for in this agreement with personnel that have the requisite cultural/linguistic competence required to achieve the purposes of this agreement. To the extent that it may be needed, free interpreting services will be available via the interpreting agreement maintained by the COUNTY for each client, as a back-up service in the event of an urgent need.

Section 2.03 Confidentiality – Prior to providing any services pursuant to this Agreement, all employees or COUNTY authorized subcontractors of 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.

Section 2.04 HIPAA – As a condition of Contractor performing services for the County of El Dorado, Contractor shall comply with that Business Associate Agreement which is attached hereto as Exhibit F, which is incorporated herein for all intents and purposes.

Section 2.05 Record Retention – Contractor shall maintain client medical and/or clinical records for a minimum of seven (7) years following the date of last service, except for minors. Records of minors must be maintained for at least one (1) year after a minor has reached age eighteen (18), but in no event for less than seven (7) years beyond the date of last service.

CONTRACTOR shall keep books and financial records as prescribed by COUNTY for each client of the CONTRACTOR for five (5) years together with complete and adequate financial records for all expenditures made by CONTRACTOR in connection with the administration of the program.

Records which relate to litigation or settlement of claims arising out of the performance of this Agreement, or cost and expenses of this Agreement to which exception has been taken by

COUNTY or State governments, shall be retained by CONTRACTOR until disposition of such appeals, litigation, claims or exceptions is completed.

All records associated with this Agreement shall be open for inspection on request by the COUNTY Contract Administrator, or designee, at times mutually agreed upon by the parties hereto.

Section 2.06 Notification of Occurrences – CONTRACTOR shall notify the COUNTY Contract Administrator, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, including, but not limited to: accidents, injuries, death, or acts of negligence, related in any way to the provision of services pursuant to this Agreement.

Section 2.07 Mandated Reporter Requirements – CONTRACTOR acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of California Penal Code Section 11164 et. seq., also known as The Child Abuse and Neglect Reporting Act.

### **Article III. TERM**

This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of date of execution to June 30, 2012 unless earlier terminated pursuant to the provisions under Article XI herein.

### **Article IV. COMPENSATION FOR SERVICES**

Section 4.01 CONTRACTOR shall submit monthly invoices no later than thirty (30) days following the end of a “service month” except in those instances where CONTRACTOR obtains written approval from COUNTY Health Services Department Director or Director’s designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a “service month” shall be defined as a calendar month during which CONTRACTOR provides services in accordance with Article I, “Scope of Services.”

Section 4.02 For services provided herein, COUNTY agrees to pay CONTRACTOR monthly in arrears and within forty-five (45) days following the COUNTY’s receipt and approval of itemized invoice(s) identifying services rendered, as documented on Exhibit D, which must accompany each invoice submitted. Payment shall be made only for actual services rendered as documented on said reports.

Section 4.03 Rates:

| <u>Service Category</u>                               | <u>Hourly Rate</u> | <u>Estimated Amount</u> |
|---|--------------------|-------------------------|
| PIP Aide  | \$34.30            | \$67,097                |
| PIP Coordinator                                       | \$40.29            | \$5,903                 |
| <b>Total Not-to-Exceed for term of this Agreement</b> |                    | <b>\$73,000</b>         |

Contractor’s allowable services billed to County may reflect a shift/variation between personnel line items of up to \$1,000; however, in no event shall County be obligated to pay Contractor for any amount above the total Not-to-Exceed amount for this Agreement, as shown above.

Section 4.04 For the purposes of this Agreement, the hourly rate shall include wages, benefits (including leave hours), supervision, support staff and overhead (including, but not necessarily limited to, office supplies, mileage, communication, fees, insurance, postage, printing and duplication, and administrative overhead).

Section 4.05 Not-to-Exceed: \$73,000 over the term of this Agreement.

Section 4.06 Invoices / Remittance shall be addressed as indicated in the table below or to such other location as COUNTY or CONTRACTOR may direct per Article XII – Notice to Parties.

| Mail invoices to:   | Mail remittance to:   |
|---|---|
| Health Services Department – Finance Unit<br>929 Spring Street<br>Placerville, CA 95667 | Black Oak Mine Unified School District<br>6540 Wentworth Springs Road<br>Georgetown, CA 95634 |

**Article V. MENTAL HEALTH SERVICES ACT AGREEMENT TERMS AND CONDITIONS**

CONTRACTOR shall meet applicable terms and conditions specified in the COUNTY’s agreement with California Department of Mental Health (DMH), as stated in Exhibit G, marked “Mental Health Services Act Agreement,” incorporated herein and made by reference a part hereof.

**Article VI. CHANGES TO AGREEMENT**

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**Article VII. CONTRACTOR TO COUNTY**

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from COUNTY and its staff. It is further agreed that in all matters pertaining to this Agreement, CONTRACTOR shall act as Contractor only to COUNTY and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONTRACTOR’s responsibilities to COUNTY during term hereof.

**Article VIII. ASSIGNMENT AND DELEGATION**

CONTRACTOR is engaged by COUNTY for its unique qualifications and skills as well as those of its personnel. CONTRACTOR shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of COUNTY.

**Article IX. INDEPENDENT CONTRACTOR/LIABILITY**

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. CONTRACTOR exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONTRACTOR shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. COUNTY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONTRACTOR or its employees.

**Article X. FISCAL CONSIDERATIONS**

The parties to this Agreement recognize and acknowledge that COUNTY is a political subdivision of the State of California. As such, County of El Dorado is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of COUNTY business, COUNTY will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, COUNTY shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and COUNTY released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any COUNTY department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the COUNTY, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

**Article XI. DEFAULT, TERMINATION, AND CANCELLATION**Section 11.01 Default

Upon the occurrence of any default of the provisions of this Agreement, a party shall give written

notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, COUNTY reserves the right to take over and complete the work by contract or by any other means.

#### Section II.02 Bankruptcy

This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

#### Section II.03 Ceasing Performance

COUNTY may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

#### Section II.04 Termination or Cancellation without Cause

COUNTY may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by COUNTY without cause. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

### **Article XII. NOTICE TO PARTIES**

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to COUNTY shall be addressed as follows:

COUNTY OF EL DORADO  
HEALTH SERVICES DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: DANIEL NIELSON, MPA, ACTING DIRECTOR



or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

**BLACK OAK MINE UNIFIED SCHOOL DISTRICT  
6540 WENTWORTH SPRINGS ROAD  
GEORGETOWN, CA 95634  
ATTN: DREW WOODALL, DIRECTOR OF EDUCATIONAL SERVICES**

or to such other location as the CONTRACTOR directs.

**Article XIII. INDEMNITY**

The CONTRACTOR shall defend, indemnify, and hold the COUNTY, its officers, employees, agents, and representatives harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the CONTRACTOR's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, the CONTRACTOR, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the COUNTY, its officers and employees, or as expressly prescribed by statute. This duty of CONTRACTOR to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

**Article XIV. INSURANCE**

Section 14.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

- (a) Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California; and
- (b) Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage;
- (c) Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.

Section 14.02 In the event CONTRACTOR is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.

Section 14.03 CONTRACTOR shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

Section 14.04 The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

Section 14.05 CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CONTRACTOR agrees that no work or services shall be performed prior to the giving of such approval. In the event the CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

Section 14.06 The certificate of insurance must include the following provisions listed under Section 14.06(a) and (b) (including an endorsement page for the "additional insured" language pursuant to Section 14.06(b)), stating that:

- (a) The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to COUNTY, and;
- (b) The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

Section 14.07 The CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

Section 14.08 Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Section 14.09 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or volunteers.

Section 14.10 The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

Section 14.11 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 14.12 In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

Section 14.13 Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the COUNTY.

**Article XV. INTEREST OF PUBLIC OFFICIAL**

No official or employee of COUNTY who exercises any functions or responsibilities in review or approval of services to be provided by CONTRACTOR under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of COUNTY have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**Article XVI. INTEREST OF CONTRACTOR**

CONTRACTOR covenants that CONTRACTOR presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall be employed by CONTRACTOR.

**Article XVII. CONFLICT OF INTEREST**

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. CONTRACTOR attests that it has no current business or financial relationship with any COUNTY employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. COUNTY represents that it is unaware of any financial or economic interest of any public officer or employee of CONTRACTOR relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

**Article XVIII. CALIFORNIA RESIDENCY (FORM 590)**

All independent contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or COUNTY shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

**Article XIX. TAXPAYER IDENTIFICATION NUMBER (FORM W-9)**

All independent contractors or corporations providing services to the COUNTY must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

**Article XX. COUNTY BUSINESS LICENSE**

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County business license unless exempt under County Code Section 5.08.070.

**Article XXI. ADMINISTRATOR**

The County Officer or employee with responsibility for administering this Agreement is Robert Evans, Program Manager, Health Services Department, Mental Health Division, or successor.

**Article XXII. AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**Article XXIII. PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**Article XXIV. VENUE**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in County of El Dorado, California, and shall be resolved in accordance with the laws of the State of California.

**Article XXV. ENTIRE AGREEMENT**

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Raymond J. Nutting  
Chair, Board of Supervisors  
COUNTY

*ATTEST:*  
*Suzanne Allen de Sanchez*  
*Clerk of the Board of Supervisors*

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Deputy Clerk

-- CONTRACTOR --

BLACK OAK MINE UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Drew Woodall  
Director of Educational Services  
CONTRACTOR

**Exhibit A**  
**Walker-McConnell Scale (WMS)**  
**Black Oak Mine Unified School District**  
**Primary Intervention Program (PIP)**

**WALKER-McCONNELL SCALE (WMS)**

**Student Name** \_\_\_\_\_

| <b>WMS Scoring Template</b>   | <b>Subscale Scores</b>                                   |          |          |
|---|--|----------|----------|
|   | <b>1</b>   | <b>2</b> | <b>3</b> |
| <b>Note: Duplicate this template as needed</b>  |  |          |          |
| 1. Other children seek child out to involve him/her in activities.  |  |          |          |
| 2. Changes activities with peers to permit continued interaction.   |  |          |          |
| 3. Uses free time appropriately.  |  |          |          |
| 4. Shares laughter with peers.  |  |          |          |
| 5. Shows sympathy for others.   |  |          |          |
| 6. Makes friends easily with other children.  |  |          |          |
| 7. Has good work habits (e.g., is organized, makes efficient use of class time, etc.).  |  |          |          |
| 8. Asks questions that request information about someone or something.  |  |          |          |
| 9. Compromises with peers when situation calls for it.  |  |          |          |
| 10. Responds to teasing or name calling by ignoring, changing the subject, or some other constructive means.                    |  |          |          |
| 11. Spends recess and free time interacting with peers.   |  |          |          |
| 12. Accepts constructive criticism from peers without becoming angry.   |  |          |          |
| 13. Plays or talks with peers for extended periods of time.   |  |          |          |
| 14. Voluntarily provides assistance to peers who require it.  |  |          |          |
| 15. Assumes leadership role in peer activities.   |  |          |          |
| 16. Is sensitive to the needs of others.  |  |          |          |
| 17. Initiates conversation(s) with peers in informal situations.  |  |          |          |
| 18. Expresses anger appropriately (e.g., reacts to situation without becoming violent or destructive).                          |  |          |          |
| 19. Listens carefully to teacher instructions and directions for assignments.   |  |          |          |
| 20. Answers or attempts to answer a question when called on by the teacher.   |  |          |          |
| 21. Displays independent study skills (e.g., can work adequately with minimum teacher support).                                 |  |          |          |
| 22. Appropriately copes with aggression from others (e.g., tries to avoid a fight, walks away, seeks assistance, defends self). |  |          |          |
| 23. Responds to conventional behavior management techniques (e.g., praise, reprimands, timeout).                                |  |          |          |
| 24. Cooperates with peers in group activities or situations.  |  |          |          |
| 25. Interacts with a number of different peers.   |  |          |          |
| 26. Uses physical contact with peers appropriately.   |  |          |          |
| 27. Responds to requests promptly.  |  |          |          |
| 28. Listens while others are speaking (e.g., as in circle or sharing time).   |  |          |          |
| 29. Controls temper.  |  |          |          |
| 30. Compliments others regarding personal attributes (e.g., appearance, special skills, etc.).                                  |  |          |          |
| 31. Can accept not getting his/her own way.   |  |          |          |
| 32. Is socially perceptive (e.g., "read" social situations accurately).   |  |          |          |
| 33. Attends to assigned tasks.  |  |          |          |
| 34. Plays games and activities at recess skillfully.  |  |          |          |
| 35. Keeps conversation with peers going.  |  |          |          |
| 36. Finds another way to play when requests to join others are refused.   |  |          |          |
| 37. Is considerate of the feelings of others.   |  |          |          |
| 38. Maintains eye contact when speaking or being spoken to.   |  |          |          |
| 39. Gains peers attention in an appropriate manner.   |  |          |          |
| 40. Accepts suggestions and assistance from peers.  |  |          |          |
| 41. Invites peers to play or share activities.  |  |          |          |
| 42. Does seatwork assignments as directed.  |  |          |          |
| 43. Produces work of acceptable quality given his/her skill level.  |  |          |          |
| <b>SUBSCALE SCORES</b>  | <b>+</b>   | <b>+</b> | <b>=</b> |
| <b>GRAND TOTAL</b>  | <input style="width: 100px; height: 20px;" type="text"/> |          |          |

**Exhibit B**  
**Program Description**  
**Black Oak Mine Unified School District**  
**Primary Intervention Program (PIP)**

Primary Intervention Program (PIP) is an evidence based practice that has been supported by the California Department of Mental Health since 1983 and is part of the California Early Mental Health Initiative.

The goals of the Primary Intervention Program are to:

- enhance the social and emotional development of students in grades Kindergarten through 3;
- increase the likelihood that students experiencing mild to moderate school adjustment difficulties will succeed in school;
- increase personal competencies related to life success; and
- minimize the need for more extensive and costly services as the students grow older.

Research has shown that through PIP children can feel more connected with school and develop the confidence needed to be successful in the classroom and with peers.

**Specific Program Characteristics**

Ongoing supervision of program staff will include case consultation, as well as consultation, support and intervention in problem situations that arise involving students, teachers, and/or parents.

The requirements of the PIP model include:

- Program staff will encourage the involvement of parents/guardians and teaching staff to build alliances to promote student's mental health and social and emotional development.
- PIP will have a core team consisting of school-based PIP Aides and a PIP Coordinator.
- There will be ongoing monitoring and evaluation of program services.
- The Mental Health Division (MHD) will be available to work with the screening team, referring teacher, and family to either provide services to, or referrals for, children whose needs cannot be met by PIP or other school-based services.



The toys, games and art supplies in the playroom to be used for the PIP have been chosen in order to allow the child to:

- express him/herself symbolically;
- practice things that are perceived as too difficult and to succeed at new things;
- release tension;
- conquer fears or frustrations;
- recreate experiences and change the outcome;
- experiment and find strengths; and
- try new behaviors and different roles.

Through this program the child in the classroom has a chance to build a positive relationship with an adult who cares about him/her.

PIP Aides will be trained regarding referral and access to County MHD services. Linkages to other needed services may be improved as a function of the potential participation in the Community Strengthening Group in which collaboration with other providers is enhanced. The Community Strengthening Group is comprised of County agencies and local vendors.

The Walker-McConnell Scale (WMS), a survey instrument used to assess social and emotional development, will be used to screen students two times – at the time the student is selected to enter the program and again when the student exits the program. The evaluation form will be completed by the classroom teacher and submitted to the PIP Coordinator.









## Exhibit F HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

### RECITALS

WHEREAS, COUNTY and CONTRACTOR (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to COUNTY, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the COUNTY and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

WHEREAS, COUNTY is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

WHEREAS, BA, when a recipient of PHI from COUNTY, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

WHEREAS, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

WHEREAS, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

WHEREAS, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI

- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the COUNTY, Privacy Rule, Security Rule, or the HITECH Act.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
  - (3) disclose PHI as necessary for BA's operations only if:
    - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
      - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
      - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
  - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing COUNTY with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by COUNTY.
  - (5) not disclose PHI disclosed to BA by COUNTY not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by COUNTY.
  - (6) de-identify any and all PHI of COUNTY received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from COUNTY, or from another business associate of COUNTY, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by COUNTY to BA, BA agrees to:
  - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
  - B. Report to COUNTY within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to COUNTY in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the COUNTY, BA may be required to reimburse the COUNTY for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the COUNTY and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by COUNTY to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
  - A. Provide access, at the request of COUNTY, within five (5) days, to PHI in a Designated Record Set, to the COUNTY, or to an Individual as directed by the COUNTY. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable COUNTY to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
  - B. Within ten (10) days of receipt of a request from COUNTY, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule



in the event that the PHI in BA's possession constitutes a Designated Record Set.

- C. To assist the COUNTY in meeting its disclosure accounting under HIPAA:
  - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
  - (2) Within in 30 days of notice by the COUNTY, BA agrees to provide to COUNTY information collected in accordance with this section to permit the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.
  
- D. Make available to the COUNTY, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide COUNTY a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of COUNTY.

- A. COUNTY agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by COUNTY that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  
- B. COUNTY agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  
- C. COUNTY agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

- D. COUNTY shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COUNTY, except as may be expressly permitted by the Privacy Rule.
- E. COUNTY will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the COUNTY to BA, or created or received by BA on behalf of the COUNTY, is destroyed or returned to the COUNTY, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the COUNTY's knowledge of a material breach by the BA, the COUNTY shall either:
  - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the COUNTY.
  - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the COUNTY shall report the violation to the Secretary.
- C. Effect of Termination.
  - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of COUNTY, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the COUNTY determines that returning or destroying the PHI is infeasible, BA shall provide to the COUNTY notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If COUNTY elects destruction of the PHI, BA shall certify in writing to COUNTY that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "COUNTY") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the COUNTY in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of COUNTY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of COUNTY as set forth herein. BA's obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the COUNTY herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the COUNTY to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

# EXHIBIT G

## Mental Health Services Act Agreement

County: El Dorado

### **1. Compliance**

In performance of this agreement, the County will fully comply with:

- a). The provisions of the Mental Health Services Act and all applicable regulations, related statutes, directives, policies, procedures and amendments.
- b). State of California, Department of General Services, Terms and Conditions which can be accessed at <http://www.documents.dgs.ca.gov/ol/GTC-307.doc>

The County will ensure diligence in managing programs under this agreement, including performing sufficient monitoring activities and taking prompt corrective action against known violations of the MHSA.

If, at any point during the duration of this Agreement, the state determines that the County is out of compliance with any provision in this Agreement, the State may request a plan of correction, after providing the County with written notification and the basis for the finding of noncompliance.

This agreement contains the entire agreement of the parties and supersedes all negotiations, verbal or otherwise and any other agreement between the parties hereto. This agreement is not intended to and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the State and the County. The County represents and warrants it is free to enter into and fully perform this agreement.

### **2. Certification / Assurances**

Except as otherwise indicated, the following certifications apply to all Counties:

- a). Unenforceable Provision: In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected hereby.
- b). Indemnification: Pursuant to the provision of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.
- c). Performance Contract: The County acknowledges that this Agreement meets the requirements for the distribution of Mental Health Act Services funding in a Performance Contract as required in Chapter 2 of the Welfare & Institutions Code beginning with Section 5650 and agrees to comply with the provisions in Section 5650 – 5667 et seq.

### **3. Standards of Conduct**

The following standards apply to all Counties:

- a). Every reasonable course of action will be taken by the County in order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable or improper conduct. This

## EXHIBIT G

Agreement will be administered in an impartial manner, free from efforts to gain personal, financial or political gain.

- b). An executive or employee of the County or an elected official in the County, will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by the County or the State. Supplies, materials, equipment or services purchased with Agreement funds will be used solely for purposes allowed under this Agreement. No member of the County Board will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents.
- c). The State, by written notice to the County, may terminate the right of the County to proceed under this Agreement if it is found, after notice and hearing by the State, that gratuities were offered or given by the County or any agent or representative of the County to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such Agreement, provided that the existence of the facts upon which the State makes such findings that shall be an issue may be reviewed in any competent court.

In the event this Agreement is terminated as provided in the paragraph above, the State shall be entitled:

- (a) to pursue the same remedies against the County as it could pursue in the event of the breach of the Agreement by the County, and
- (b) as a predetermined amount of liquidated damages in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount which shall be not less than three times the cost incurred by the State in providing any such gratuities to any such officer or employee.

The rights and remedies of the County provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The County warrants by execution of this Agreement that no person or selling agency has been employed or retained to solicit or secure this Agreement upon a Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of the County, for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Agreement without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- d). County employees, and sub-contractors and/or consultants retained by the County with funds provided under this agreement must comply with the provisions of Government Code Section 19990.

#### 4. Subcontracting

The County certifies that:

- a). Any of the work or services specified in this agreement which will be performed by other than the County will be evidenced by a written agreement specifying the terms and conditions of such performance.
- b). The County will maintain and adhere to an appropriate system, consistent with federal, state and local law, for the award and monitoring of contracts which contain acceptable standards for insuring accountability.

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- c). The system for awarding contracts will contain safeguards to insure that the County does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds.
- d). Subcontractors will comply with the Confidentiality requirements set forth in provision 17 of this Agreement.

### 5. Insurance

The County hereby warrants that it carries and shall maintain in full force and effect during the full term of this contract and any extensions to said term:

- Sufficient and adequate Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement and agrees to furnish to the State satisfactory evidence thereof at any time the State may request the same; and,
- Sufficient and adequate Liability Insurance to cover any and all potential liabilities and agrees to furnish to State satisfactory evidence thereof upon request by the State.

### 6. Resolution

The County must provide the State with a copy of a resolution, order, motion or ordinance of the local governing body which by law has the authority to enter into an agreement, authorizing execution of this Agreement. Documents submitted authorizing execution of the Agreement must reference the Agreement number and must contain a statement of approval by the local governing body.

Additionally, the County may designate an individual to act as fiscal and programmatic administrative agent for the purposes of this Agreement. If the County exercises this discretion, they must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing the designation of an agent. Preferably resolutions should authorize a designated position rather than a named individual.

### 7. Payment

Upon the approval date of this Agreement pursuant to an approved Three-Year Program and Expenditure Plan and/or annual update, with the exception of funds approved for local planning purposes, the State shall distribute MHSA funds for approved Three-Year Program and Expenditure Plans and updates to the County as follows:

- Seventy-Five percent (75%) of State Fiscal Year Plan Approved amount upon Three-Year Program and Expenditure Plan(s) approval or the start of the State Fiscal year, whichever is later;
- Twenty-Five percent (25%) of State Fiscal Year Plan Approved amount upon receipt by the State of completed fiscal and programmatic reports.

The County's failure to submit completed required fiscal and programmatic reports may affect future State Fiscal Year distributions.

Funds requested by the County and approved by the State for local planning purposes will be distributed in total upon approval by the State.

Funds assigned by the County as allowed under provision #10 of this Agreement will be distributed and/or transferred pursuant to the terms delineated in the Assignment document.

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### 8. Accounting and Use of Funds

- a). The County shall utilize funds provided under this agreement in accordance with its approved Three-Year Program and Expenditure plan, the MHSA, state regulations and directives, policies and procedures established by the State.
- b). The County will comply with controls, record keeping and fund accounting procedure requirements of MHSA, and all applicable regulations, directives, policies and procedures to ensure the proper disbursement of, and accounting for, program funds paid to the County and disbursed by the County, under this Agreement.
- c). Income (including interest income) generated as a result of the receipt of MHSA activities, will be utilized in accordance with the MHSA, state regulations and directives, and policy and procedures established by the State. The County will account for any such generated income separately.
- d). The County shall account for MHSA funds in accordance with MHSA Section 5892 (f) and in a manner to allow the State to exercise its responsibility under MHSA Section 5892 (h).
- e). The County will identify, as a part of the proposed Three-Year Program and Expenditure Plan, a Prudent Reserve from allocations for client services. If approved, the Prudent Reserve will be retained by the County and must be accounted for separately in the local Mental Health Services Fund. The Prudent Reserve may not be expended unless approval is obtained through the Three-Year Program and Expenditure Plan Amendment process.

### 9. Amendments

This Agreement may be unilaterally modified by the State only under any of the following circumstances:

- a). A modification to the Agreement is required in order to:
  - provide planning funds in response to an approved request;
  - implement a program component under a County's Three-Year Program and Expenditure Plan in response to a County's approved request;
  - expand services under an existing program component under a County's Three-Year Program and Expenditure Plan in response to a County's approved request.
- b). There is an increase or decrease in state MHSA funding levels.
- c). There is a change in state law or regulation requiring a change in the provisions of this agreement.
- d). Funds awarded to the County have not been expended in accordance with the County's approved Three-Year Program and Expenditure Plan.

Except as provided above, this Agreement may be modified only in writing by the mutual agreement of both parties, through either the mandatory annual update process or by submission of a separate written request for amendment. Three-Year Program and Expenditure Plan amendments must follow the process outlined in the MHSA, regulations, directives, policies, and procedures.

Either the State or the County may request a Three-Year Program and Expenditure Plan Amendment.

No additional MHSA funds shall be provided to the County pursuant to the proposed amendment unless and until the State has approved the County's request.



## EXHIBIT G

### 10. Assignment

By mutual consent, the County may assign the funding reserved for the County for specific MHSA activities to the State for the purposes of implementing state administered MHSA projects. Such assignment will occur through an assignment agreement executed between the State and the County which specifies the purpose of the agreement and the source of funds. The State will retain the right to sub-contract for the provision of services intended by the assignment.

### 11. Reporting

The County will compile and submit reports of services, activities, performance attainment, expenditures, status of cash and closeout information by the specified dates as prescribed by the State in regulations, directives, and policies. Failure to adhere to the specified reporting requirements may result in funds not being released.

### 12. Termination

The State may terminate this agreement in whole or in part when it has determined that the County has substantially violated a specific provision of the MHSA regulations or implementing state legislation. The State will provide a termination notice in writing to the County.

Upon the County's receipt of notice of termination from the State, and except as otherwise directed in the notice, the County shall:

- A. Stop work on the date specified in the notice;
- B. Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Contract up to effective date of termination;
- C. Terminate all orders and subcontracts;
- D. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
- E. Deliver or make available to the State all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the County under this Agreement, whether completed, partially completed, or in progress;
- F. In the event of termination, an equitable adjustment in the funds provided by this Agreement shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials, supplies, and expenses incurred pursuant to this Agreement prior to the effective date of termination;
- G. In the event an adjustment is made as specified in Item F above, the County will promptly return to the State all unexpended distributions advanced pursuant to Item 7 of the Agreement.

Notices to the County will be addressed to:

Director  
El Dorado County Mental Health  
344 Placerville Drive, Ste. 20  
Placerville, CA 95667

### 13. Records

- a). The County will retain all records pertinent to this Agreement for a period of five (5) years from the date of expiration of this Agreement. If, at the end of five (5) years, there is litigation or an audit involving those records, the County will retain the records until the resolution of such litigation or audit.
- b). The State or their designee will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this Agreement. For purposes of this section, "access to" means that the County shall at all times maintain a complete set of records

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and documents related to programs funded by this agreement and shall make these records available to the State or their designee in a central location. The County's performance under the terms and conditions herein specified will be subject to an evaluation by the State of the adequacy of the services performed, timeliness of response and a general impression of the competency of the County and its staff.

### 14. Audits

- a). From time to time, the State may inspect the facilities, systems, books and records of the County to monitor compliance with this Agreement. The County shall promptly remedy any violation of any provision of this Agreement and shall certify the same to the State in writing. The fact that the State inspects, or fails to inspect, or has the right to inspect, the County's facilities, systems and procedures does not relieve the County of its responsibilities to comply with this Agreement. The State's failure to detect or detection, but failure to notify the County or require the County's remediation of any unsatisfactory practice, does not constitute acceptance of such practices or a waiver of the State's enforcement rights under this Agreement.
- b). The County will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors.
- c). The County and/or auditors performing monitoring or audits of the County or its sub-contracting service providers will immediately report to the State any incidents of fraud, abuse or other criminal activity in relation to this agreement, the MHSA, or its regulations.

### 15. Disallowed Costs

The County will use funds provided under this Agreement for the purposes specified in the MHSA and approved Three-Year Program and Expenditure Plan. Except to the extent that the State determines it will assume liability, the County will be liable for and will repay, to the State, any amounts expended under this Agreement found not to be in accordance with MHSA, applicable regulations, directives, policies and the Three-Year Program and Expenditure Plan or this agreement.

### 16. Conflict Resolution

Should a dispute arise between the County and the State relating to performance or disallowed costs under this Agreement, other than disputes governed by the dispute resolution process set forth in CCR, Title 9, Division 1, Chapter 11, the County shall, prior to exercising any other remedy that may be available, file a "Notice of Dispute" with the State within 15 (fifteen) days of discovery of the problem. Within 15 (fifteen) days, the State shall meet with the County, review the factors in the dispute, and recommend a means for resolving the dispute before a written response is provided to the County. The State shall provide a written response to the County within 30 (thirty) days of the meeting.

Notices of Dispute shall be sent to:

DMH Review/Appeal Officer  
Department of Mental Health  
1600 9th Street, Room 100  
Sacramento, CA 95814  
Telephone: (916) 654-2526  
Fax: (916) 654-5591

## EXHIBIT G

In the event of a dispute, the language contained in this Agreement shall prevail over any other language, including that contained in the County's Three-Year Program and Expenditure Plan.

In the event the County disagrees with the State's written response to the Notice of Dispute, the County retains the right to appeal any determination of the State relating to County performance or disallowed costs under this Agreement. Appeals from determinations shall be conducted through the established appeals process for determinations by the State.

The County and the State shall continue to perform their duties and obligations under this Agreement during any dispute.

### 17. Confidentiality Requirements

Acknowledging the County's continuing obligation to follow existing legal mandates regarding protection and/or release of information maintained by the County, the following Confidentiality Requirements apply:

#### 1. General Requirements

- A. The County will not disclose data or documents or disseminate the contents of the final or any preliminary report without express permission of the Agreement Manager.
- B. Permission to disclose information or documents on one occasion or at public hearings held by the Department of Mental Health relating to the same shall not authorize the County to further disclose such information or documents on any other occasions.
- C. The County will not comment publicly to the press or any other media regarding the data or documents generated, collected, or produced in connection with this Agreement, or the Department of Mental Health's actions on the same, except to the Department of Mental Health staff, the County's own personnel involved in the performance of this Agreement, at a public hearing, or in response to the questions from a legislative committee.
- D. If requested by the State, the County shall require each of its employees or officers who will be involved in the performance of this Agreement to agree to the above terms in a form to be approved by the State and shall supply the State with evidence thereof.
- E. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure of the same.
- F. After any data or documents submitted has become a part of the public records of the State, the County may, if it wishes to do so, at its own expense and upon approval by the Agreement Manager, publish or utilize the same but shall include the following legend:

LEGAL NOTICE: This report was prepared as an account of work sponsored by the Department of Mental Health, but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or the County or any of its Subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

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- G. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.
- H. "Proprietary data" is such data as the County has identified in a satisfactory manner as being under County's control prior to commencement of performance of this Agreement and which has been reasonably demonstrated as being of a proprietary force and effect at the time this Agreement is commenced.
- I. "Generated data" is that data, which a County has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the County in the performance of this Agreement at County expense, together with complete documentation thereof, shall be treated in the same manner as generated data.
- J. "Deliverable data" is that data which under terms of this Agreement is required to be delivered to the State. Such data shall be property of the State.
- K. "Generated data" shall be the property of the State unless and only to the extent that it is specifically provided otherwise herein.
- L. The title to the County's proprietary data shall remain in the County's possession throughout the term of this Agreement and thereafter. As to generated data which is reserved to the County by express terms of this Agreement and as to any preexisting or proprietary data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the County shall preserve the same in a form which may be introduced in evidence in a court of competent jurisdiction at the County's own expense for a period of not less than three years after receipt by the State of the final report or termination of this Agreement and any and all amendments hereto, or for three years after the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later.
- M. Prior to the expiration of such time and before changing the form of or destroying any such data, the County shall notify the State of any such contemplated action; and the State may within 30 days after said notification determine whether it desires said data to be further preserved and, if the State so elects, the expense of further preserving said data shall be paid for by the State. The County agrees that the State shall have unrestricted reasonable access to the same during said three-year period and throughout the time during which said data is preserved in accordance with this Agreement, and the County agrees to use best efforts to furnish competent witnesses or to identify such competent witnesses to testify in any court of law regarding said data.
- N. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the following are those individuals:

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### FOR THE STATE

Information Security Officer  
Department of Mental health  
1600 9<sup>th</sup> Street Room 150  
Sacramento, CA 95814

### FOR THE COUNTY

Information Security/Privacy Officer  
344 Placerville Drive, Ste. 20  
Placerville, CA 95667

## 2. Confidentiality Requirements relating to the Health Insurance Portability and Accountability Act (HIPAA)

- A. The County shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 d et seq, of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, CFR, Parts 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI).
- B. Permitted Uses and Disclosures of IIHI by the County.
- (1) *Permitted Uses and Disclosures.* Except as otherwise provided in this Agreement, the County, may use or disclose IIHI to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
- (2) *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Agreement, the County may:
- (a) Use and disclose IIHI for the proper management and administration of the County or to carry out the legal responsibilities of the County, provided that such use and disclosures are permitted by law.
- (b) Use IIHI to provide data aggregation services to The State. Data aggregation means the combining of IIHI created or received by the County for the purposes of this Agreement with IIHI received by the County in its capacity as the County of another HIPAA covered entity, to permit data analyses that relate to the health care operations of the State.
- C. Responsibilities of the County.
- The County agrees to prevent use or disclosure of IIHI other than as provided for by this Agreement. The County shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of the County's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Agreement. The County shall provide the State with information concerning such safeguards as the State may reasonably request from time to time.

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The County shall restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only.

The County shall implement appropriate authentication methods to ensure information system access to confidential, personal (e.g., IIHI) or sensitive data is only granted to properly authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), the County shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-68 and the SANS Institute Password Protection Policy.

The County shall:

- (1) Implement the following security controls on each server, workstation, or portable (e.g., laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
    - (a) Network-based firewall and/or personal firewall
    - (b) Continuously updated anti-virus software
    - (c) Patch-management process including installation of all operating system/software vendor security patches
  - (2) Encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, CDs and thumb drives) and on portable computing devices (including, but not limited to, laptop computers and PDAs) with a solution that uses proven industry standard algorithms. The County shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network unless, at minimum, a 128-bit encryption method (for example AES, 3DES, or RC4) is used to secure the data.
- D. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to the County of a use or disclosure of IIHI by the County or its Subcontractors in violation of the requirements of this Agreement.
- E. Agents and Subcontractors of the County. To ensure that any agent, including a Subcontractor to which the the County provides IIHI received from the State, or created or received by the County, for the purposes of this Agreement shall comply with the same restrictions and conditions that apply through this Agreement to the County with respect to such information.
- F. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, the County shall notify the State immediately upon discovery of any breach of Medi-Cal related IIHI and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the State Information Security Officer, within two business days of discovery, at (916) 651-6776. County shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. County shall investigate such breach and provide a written report of the investigation to the State Information Security Officer, postmarked within thirty (30) working days of the discovery of the breach to the address below:
- Information Security Officer  
Office of HIPAA Compliance  
California Department of Mental Health  
1600 9th Street, Room 150  
Sacramento, CA 95814
- G. Employee Training and Discipline. To train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose IIHI; and discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment.

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- H. **Audits, Inspection and Enforcement.** From time to time, Subcontractor may inspect the facilities, systems, books and records of the County to monitor compliance with this Agreement. The County shall promptly remedy any violation of any provision of this Agreement and shall certify the same to the Subcontractor Information Security Officer in writing. The fact that Subcontractor inspects, or fails to inspect, or has the right to inspect, the County's facilities, systems and procedures does not relieve the County of its responsibilities to comply with this Agreement. The State's failure to detect or detection, but failure to notify the County or require the County's remediation of any unsatisfactory practice, does not constitute acceptance of such practices or a waiver of the State's enforcement rights under this Agreement.
- I. **Termination for Cause.** Upon the State's knowledge of a material breach of this Agreement by the County, the State shall either:
- (1) Provide an opportunity for the County to cure the breach or end the violation and terminate this Agreement if the County does not cure the breach or end the violation within the time specified by the State.
  - (2) Immediately terminate this Agreement if the County has breached a material term of this Agreement and cure is not possible; or,
  - (3) If neither cure nor termination is feasible, the State Information Security Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- J. **Judicial or Administrative Proceedings.** The State may terminate this Agreement, effective immediately, if (i) the County is found liable in a civil matter or guilty in a criminal matter proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the County has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws is made in an administrative or civil proceeding in which the County is a party.
- K. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, the County shall return or destroy all IIHI received from the State that the County still maintains in any form, and shall retain no copies of such IIHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such IIHI to those purposes that make the return or destruction of such IIHI infeasible. This provision shall apply to IIHI that is in the possession of Subcontractors or agents of the County.
- L. **Miscellaneous Provisions.**
- (1) **Disclaimer.** The State makes no warranty or representation that compliance by the County with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for the County's own purposes or that any information in the County's possession or control, or transmitted or received by the County is, or will be, secure from unauthorized use or disclosure. The County is solely responsible for all decisions made by the County regarding the safeguarding of IIHI.
  - (2) **Assistance in Litigation or Administrative Proceedings.** The County shall make itself, and use its best efforts to make any Subcontractors, employees or agents assisting The County in the performance of its obligations under this Agreement, available to the State at no cost to the State to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the State, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the County and/or its Subcontractor, employee, or agent, except where the County or its Subcontractor, employee, or agent is a named adverse party.
  - (3) **No Third-Party Beneficiaries.** Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than

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the State or the County and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.

- (4) Interpretation. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable laws.
- (5) Regulatory References. A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
- (6) Survival. The respective rights and obligations of the County under Section 17.2 L (2) of this Agreement shall survive the termination or expiration of this Agreement.
- (7) No Waiver of Obligations. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

### 18. Signatures

This Agreement is of no force and effect until signed by both of the parties hereto. The County will not commence performance prior to the beginning of this Agreement or upon final approval.