

AGREEMENT FOR SERVICES

#440-PHD0505

ALCOHOL/DRUG TREATMENT SERVICES  
NEW MORNING YOUTH & FAMILY SERVICES, INC.

AMENDMENT II

**THIS AMENDMENT II** to that **AGREEMENT** made and entered into on July 1, 2005 by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and New Morning Youth & Family Services, Inc., a California Nonprofit Public Benefit Corporation qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 6765 Green Valley Road, Placerville, CA 95667 (hereinafter referred to as "CONTRACTOR");

WITNESSETH

**WHEREAS**, CONTRACTOR is currently under agreement with COUNTY for the provision of alcohol and other drug treatment services; and

**WHEREAS**, COUNTY has need to reappropriate existing funding; and

**WHEREAS**, said reappropriation is allowed under the current agreement, and necessitates replacement of **Article 3.2, Amount of Funding**;

**NOW, THEREFORE**, it is mutually agreed as follows:

**Article 3.2, Amount of Funding**, is replaced in its entirety with the following:

**Article 3.2 Amount of Funding**

The total maximum obligation of COUNTY for services provided under this Agreement is set forth below, by funding type.

		<u>Original</u>	<u>Amend I</u>	<u>Amend II</u>
<u>Maximum FFY 04/05 Block Grant Obligation to be expended by June 30, 2006</u>				
SAPT Federal Block Grant Discretionary	FFY 04/05	\$16,200	\$16,200	\$16,200
SAPT Federal Block Grant HIV Set Aside	FFY 04/05	0	0	0
SAPT Federal Block Grant Youth Treatment	FFY 04/05	<u>0</u>	<u>335</u>	<u>335</u>
<i>Total Maximum FFY 04/05 Block Grant Obligation of This Agreement</i>		<del>\$16,200</del>	\$16,535	\$16,535
<u>Maximum FFY 05/06 Block Grant Obligation which may be carried over to County FY 06/07</u>				
SAPT Federal Block Grant Discretionary	FY 05/06	\$60,314	\$60,314	\$60,314
SAPT Federal Block Grant HIV Set Aside	FY 05/06	0	0	0
SAPT Federal Block Grant Youth Treatment	FY 05/06	<u>2,500</u>	<u>2,500</u>	<u>2,500</u>
<i>Total Maximum FFY 05/06 Block Grant Obligation of This Agreement</i>		\$62,814	\$62,814	\$62,814
<b><i>Total Maximum SAPT Block Grant Obligation of This Agreement</i></b>		<del>\$79,014</del>	\$79,349	\$79,349
<u>Maximum State General Fund Obligation</u>				
State General Fund Discretionary	FY 05/06	\$6,543	\$6,543	\$6,543
Perinatal State General Fund Discretionary	FY 05/06	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Maximum State General Fund Obligation Of This Agreement</i>		\$6,543	\$6,543	\$6,543
<u>Maximum Drug Medi-Cal Obligation*</u>				
State General Fund Drug Medi-Cal	FY 05/06	\$300	<del>\$300</del>	\$8,990
Estimated Federal Match to SGF Drug Medi-Cal	FY 05/06	300	<del>300</del>	1,251
Perinatal State General Fund Drug Medi-Cal	FY 05/06	0	0	0
Estimated Federal Match to Perinatal SGF Drug Medi-Cal	FY 05/06	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Maximum Drug Medi-Cal Obligation Of This Agreement*</i>		\$600	<del>\$600</del>	\$10,241
<b>TOTAL FY 05/06 CONTRACT AMOUNT</b>		<del>\$86,157</del>	\$86,492	\$96,133

At the County's discretion additional Drug Medi-Cal funds may be paid to Contractor as reimbursement for allowable Drug Medi-Cal services if Contractor maximum funding amount has been exhausted but there are still Drug Medi-Cal funds remaining in the total El Dorado County Drug Medi-Cal allocation which are sufficient to cover the services rendered.

*\*Drug Medi-Cal is an entitlement program. This type of program allows the County to provide necessary Drug Medi-Cal services in excess of the original contracted Drug Medi-Cal funding allocated in the State Funding Agreement. Therefore, the Maximum Drug Medi-Cal Obligation of this Agreement may exceed the total amount stated herein. County must first expend all Drug Medi-Cal funds allocated to the County for the fiscal year in question. This may require the County to reallocate funds between contracted Drug Medi-Cal service providers. Once County's allocated Drug Medi-Cal funds are fully expended, if additional allowable Drug Medi-Cal services are provided by any subcontractors (service providers) in excess of their total contracted amounts, a request is submitted to the State for the additional funding. Should the State approve the additional*

*funding, an Amendment to the State Agreement will result, which the County will process and execute. The Public Health Department will then submit a request to the Board of Supervisors for payment of invoices related to Drug Medi-Cal services provided in excess of the amounts stated in the Contractors' contracts with County. This procedure normally takes place after the Contractors' annual Agreements for Services have expired and cannot be amended.*

The parties do hereby agree that all other provisions of the Agreement are to remain in full force and effect and that said Agreement remains subject to early termination by COUNTY as set forth in the original document.

**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized representative to execute this Agreement the day and year first below written.

**COUNTY OF EL DORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
James R. Sweeney, Chairman  
El Dorado County Board of Supervisors

**ATTEST:**  
Cindy Keck, Clerk

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy Clerk

**CONTRACTOR**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Ashby, Executive Director  
New Morning Youth & Family Services, Inc.  
A California 501(c)(3) corporation

# **AMENDMENT I**

# ORIGINAL

## AGREEMENT FOR SERVICES

#440-PHD0505

### ALCOHOL/DRUG TREATMENT SERVICES NEW MORNING YOUTH & FAMILY SERVICES, INC.

#### AMENDMENT I

**THIS AMENDMENT I** to that **AGREEMENT** made and entered into on July 1, 2005 by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and New Morning Youth & Family Services, Inc., a California Nonprofit Public Benefit Corporation qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 6765 Green Valley Road, Placerville, CA 95667 (hereinafter referred to as "CONTRACTOR");

#### WITNESSETH

**WHEREAS**, CONTRACTOR is currently under agreement with COUNTY for the provision of alcohol and other drug treatment services; and

**WHEREAS**, COUNTY has need to clarify contract language and to reappropriate existing funding; and

**WHEREAS**, said reappropriation is allowed under the current agreement, and necessitates replacement of **Article 3.2, Amount of Funding** and **Article 3.4, Compensation Method**;

**NOW, THEREFORE**, it is mutually agreed as follows:

Article 3.2, Amount of Funding and Article 3.4, Compensation Method, are replaced in their entirety with the following:

**Article 3.2 Amount of Funding**

The total maximum obligation of COUNTY for services provided under this Agreement is set forth below, by funding type.

<u>Maximum FFY 04/05 Block Grant Obligation to be expended by June 30, 2006</u>			
SAPT Federal Block Grant Discretionary	FFY 04/05	\$16,200	\$16,200
SAPT Federal Block Grant HIV Set Aside	FFY 04/05	0	0
SAPT Federal Block Grant Youth Treatment	FFY 04/05	<u>0</u>	<u>335</u>
<i>Total Maximum FFY 04/05 Block Grant Obligation of This Agreement</i>		\$16,200	\$16,535
 <u>Maximum FFY 05/06 Block Grant Obligation which may be carried over to County FY 06/07</u>			
SAPT Federal Block Grant Discretionary	FY 05/06	\$60,314	\$60,314
SAPT Federal Block Grant HIV Set Aside	FY 05/06	0	0
SAPT Federal Block Grant Youth Treatment	FY 05/06	<u>2,500</u>	<u>2,500</u>
<i>Total Maximum FFY 05/06 Block Grant Obligation of This Agreement</i>		\$62,814	\$62,814
 <b><i>Total Maximum SAPT Block Grant Obligation of This Agreement</i></b>		<b>\$79,014</b>	<b>\$79,349</b>
 <u>Maximum State General Fund Obligation</u>			
State General Fund Discretionary	FY 05/06	\$6,543	\$6,543
Perinatal State General Fund Discretionary	FY 05/06	<u>0</u>	<u>0</u>
<i>Total Maximum State General Fund Obligation Of This Agreement</i>		\$6,543	\$6,543
 <u>Maximum Drug Medi-Cal Obligation*</u>			
State General Fund Drug Medi-Cal	FY 05/06	\$300	\$300
Estimated Federal Match to SGF Drug Medi-Cal	FY 05/06	300	300
Perinatal State General Fund Drug Medi-Cal	FY 05/06	0	0
Estimated Federal Match to Perinatal SGF Drug Medi-Cal	FY 05/06	<u>0</u>	<u>0</u>
<i>Total Maximum Drug Medi-Cal Obligation Of This Agreement*</i>		\$600	\$600
 <b>TOTAL FY 05/06 CONTRACT AMOUNT</b>		<b>\$86,157</b>	<b>\$86,492</b>

At the County's discretion additional Drug Medi-Cal funds may be paid to Contractor as reimbursement for allowable Drug Medi-Cal services if Contractor maximum funding amount has been exhausted but there are still Drug Medi-Cal funds remaining in the total El Dorado County Drug Medi-Cal allocation which are sufficient to cover the services rendered.

*\*Drug Medi-Cal is an entitlement program. This type of program allows the County to provide necessary Drug Medi-Cal services in excess of the original contracted Drug Medi-Cal funding allocated in the State Funding Agreement. Therefore, the Maximum Drug Medi-Cal Obligation of this Agreement may exceed the total amount stated herein. County must first expend all Drug Medi-Cal funds allocated to the County for the fiscal year in question. This may require the County to reallocate funds between contracted Drug Medi-Cal service providers. Once County's allocated Drug Medi-Cal funds are fully expended, if additional allowable Drug Medi-Cal services are provided by any subcontractors (service providers) in*

*excess of their total contracted amounts, a request is submitted to the State for the additional funding. Should the State approve the additional funding, an Amendment to the State Agreement will result, which the County will process and execute. The Public Health Department will then submit a request to the Board of Supervisors for payment of invoices related to Drug Medi-Cal services provided in excess of the amounts stated in the Contractors' contracts with County. This procedure normally takes place after the Contractors' annual Agreements for Services have expired and cannot be amended.*

#### **Article 3.4 Compensation Method**

- 3.4.1 COUNTY shall pay CONTRACTOR for the actual costs of providing service, less any revenues actually received from client fees, insurance, and/or other third party payers, provided that:
  - 3.4.1.1 Non- Drug Medi-Cal services are billed to COUNTY by unit of service at an amount not exceeding the provisional rates specified in Article 3.3 of this Agreement.
  - 3.4.1.2 Drug Medi-Cal services (if provided) shall be billed at the lower of allowable costs, usual and customary charges, or the Drug Medi-Cal statewide maximum allowance. If the State adjusts the Drug Medi-Cal statewide maximum allowance rates during the term of this Agreement, the new rate shall supersede any Drug Medi-Cal rate stated in this Agreement.
  - 3.4.1.3 The total payments shall not exceed the COUNTY'S Total Maximum Obligation, by funding type, as set forth in Article 3.2 of this Agreement.
  - 3.4.1.4 All CONTRACTOR costs must be allowable pursuant to applicable State and Federal laws, regulations, policies and procedures, as set forth in Article 6.12.
  - 3.4.1.5 Costs shall be reconciled annually in the cost report, as detailed in Article 3.9 of this Agreement. The cost report settlement is the process that determines whether provisional rates were an accurate representation of actual costs.
- 3.4.2 COUNTY shall pay CONTRACTOR monthly in arrears. Monthly payments are provisional payments only, and subject to final settlement in accordance with Article 3.9 of this Agreement.



The parties do hereby agree that all other provisions of the Agreement are to remain in full force and effect and that said Agreement remains subject to early termination by COUNTY as set forth in the original document.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representative to execute this Agreement the day and year first below written.

**COUNTY OF EL DORADO**

By: Charlie Paine  
Charlie Paine, Chairman  
El Dorado County Board of Supervisors

Date: 12/6/05

ATTEST:  
Cindy Keck, Clerk

By: Stephanie Tyler Date: 12/6/05  
Deputy Clerk

**CONTRACTOR**

By: David Ashby  
David Ashby, Executive Director  
New Morning Youth & Family Services, Inc.  
A California 501(c)(3) corporation

Date: 10/28/05

**ORIGINAL  
AGREEMENT**

**AGREEMENT FOR SERVICES**

***440-PHD0505***

**ALCOHOL/DRUG TREATMENT SERVICES  
NEW MORNING YOUTH & FAMILY SERVICES, INC.**

## Table of Contents

<b>Title Page</b>	<b><u>Page</u></b>
<b>Table of Contents</b> .....	2
<b>Recitals</b> .....	4
<b>Section 1. Definitions</b> .....	5
<b>Section 2. General Contract Provisions</b> .....	8
Article 2.1 Administrator .....	8
Article 2.2 Notices .....	8
Article 2.3 Term .....	8
Article 2.4 Contract Extension .....	8
Article 2.5 Authorized Signatures .....	8
Article 2.6 Entire Agreement .....	9
<b>Section 3. Fiscal Provisions</b> .....	10
Article 3.1 Funding Types .....	10
Article 3.2 Amount of Funding .....	10
Article 3.3 Provisional Payment Rates .....	11
Article 3.4 Compensation Method .....	11
Article 3.5 Invoicing .....	12
Article 3.6 Payment Withholding .....	13
Article 3.7 Administrative Fee Reimbursement (Drug Medi-Cal) .....	13
Article 3.8 Availability of Funds .....	13
Article 3.9 Cost Report .....	14
Article 3.10 Financial Statements .....	16
<b>Section 4. Scope of Work</b> .....	17
Article 4.1 Alcohol and Drug Treatment Services .....	17
Article 4.2 Support Tasks and Activities .....	18
<b>Section 5. Performance Requirements</b> .....	24
Article 5.1 Code of Conduct .....	24
Article 5.2 Cultural Competence .....	24

Article 5.3	Confidentiality .....	24
Article 5.4	Employee Qualifications .....	24
Article 5.5	HIPAA .....	25
Article 5.6	Continuous Operation .....	25
Article 5.7	Inspections and Audits .....	25
Article 5.8	Record Retention .....	27
Article 5.9	Report and Other Document Submission Timeframes .....	27
Article 5.10	Use of Funds .....	28
Article 5.11	Religious Activity .....	29
Article 5.12	Smoking Prohibitions .....	29
Article 5.13	Drug-Free Workplace .....	30
<b>Section 6.</b>	<b>Contract Terms and Conditions .....</b>	<b>31</b>
Article 6.1	Assignment and Delegation .....	31
Article 6.2	California Forum and Law .....	31
Article 6.3	Conflict of Interest .....	31
Article 6.4	Contract Modifications .....	31
Article 6.5	California Residency (Form 590) .....	32
Article 6.6	Contractor to County .....	32
Article 6.7	Default, Termination, or Cancellation .....	32
Article 6.8	Failure to Meet Performance Requirements .....	34
Article 6.9	Indemnity .....	34
Article 6.10	Independent Contractor/Liability .....	35
Article 6.11	Insurance .....	35
Article 6.12	Laws and Rules .....	37
Article 6.13	Licenses .....	38
Article 6.14	Literature .....	38
Article 6.15	Unlawful Use Messages .....	38
Article 6.16	Nondiscrimination In Employment .....	38
Article 6.17	Nondiscrimination In Services, Benefits and Facilities .....	39
Article 6.18	Partial Invalidity .....	40
Article 6.19	Taxpayer Identification / Form W9 .....	40
Article 6.20	Third Party Benefits .....	40
Article 6.21	Waiver of Default or Breach .....	41
<b>Signature Page .....</b>		<b>42</b>

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and New Morning Youth & Family Services, Inc., a California Nonprofit Public Benefit Corporation qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 6765 Green Valley Road, Placerville, CA 95667 (hereinafter referred to as "CONTRACTOR");

**WITNESSETH**

WHEREAS, COUNTY desires to obtain the services of a CONTRACTOR for the provision of alcohol and other drug treatment services described herein; and

WHEREAS, CONTRACTOR has represented to COUNTY that it is specially trained, experienced, expert and competent to perform the special services required herein 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 such services provided by CONTRACTOR are in the public's best interest, 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; and

WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is mutually agreed as follows:

## SECTION 1: DEFINITIONS

The words and terms of this contract are intended to have their usual meaning unless a specific or more limited meaning is associated with their usage pursuant to HSC, Division 10.5, Title 9, California Code of Regulations (CCR) Division 4, and Title 22.

Definitions of Drug Medi-Cal covered treatment modalities and services are found in Title 22. Standards for all treatment modalities are found in the American Society of Addiction Medicine-Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996.

In addition to the above, the following definitions shall apply to this Agreement:

- 1.1 "ADP" refers to the California State Department of Alcohol and Drug Programs.
- 1.2 "ASAM PPC-2" means the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, as published by the American Society of Addiction Medicine, Inc. 1996.
- 1.3 "ASI" means the Addiction Severity Index, which is a semi-structured interview designed to address seven potential problem areas in substance abusing patients: medical status, employment and support, drug use, alcohol use, legal status, family/social status, and psychiatric status.
- 1.4 "Client" means a person seeking services or one for whom a defined service has been provided. Client is an all-inclusive term that may refer to both Drug Medi-Cal and non-Drug Medi-Cal eligible individuals.
- 1.5 "Day Care Habilitative" means substance abuse counseling and rehabilitation services lasting three or more hours, but less than 24 hours, per day, for three or more days per week.
- 1.6 "Drug Medi-Cal (DMC) statewide maximum allowance" means the current reimbursement rate for California Drug Medi-Cal services, as set by the State.
- 1.7 "Early Intervention" means activities designed to modify a substance abuser's behavior and can include but is not limited to: education, information, and referral to treatment/recovery services. Medical necessity for these activities need not be established.
- 1.8 "Group Health/Addiction Education" means activities conducted in a group or classroom setting that are designed to affect critical life and social skills, including decision-making, refusal skills, critical analysis (e.g., of media messages) and systematic judgment abilities. Educational services typically include interaction between the educator/facilitator and the group participants.

- 1.9 "HEARTS Jail Services" means eight (8) hours per week of classroom education on substance abuse for HEARTS participants and associated support tasks such as class preparation, grading homework, and follow-up, for a total of seventy-two (72) hours per month.
- 1.10 "HIV Set-Aside" means funding for activities involved in the prevention and delay of the progression of HIV and Tuberculosis by encouraging counseling, assessment and testing. The HIV unit of service consists of three (3) components: (1) pre- and (2) post-counseling services, and (3) administration of an HIV test.
- 1.11 "Lifeskills" means services that address substance abuse issues through support and enhancement of a client's ability to manage activities of daily living. Medical necessity for these activities need not be established; however, only those treatment services which satisfy all Drug Medi-Cal criteria for medical necessity are reimbursable under Minor Consent Drug Medi-Cal.
- 1.12 "Medical Necessity" means substance abuse treatment services, or in the case of EPSDT, services that meet the criteria specified in Title 22, Section 51431, which are reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain through the diagnosis and treatment of a disease, illness or injury.
- 1.13 "Minor Consent Drug Medi-Cal Services" means drug and alcohol abuse treatment and counseling services rendered to a person age 12 through 21 who, without parental consent, may receive medically necessary services related to drug and alcohol abuse or dependence. Except for full-scope Medi-Cal beneficiaries age 12 through 21 who have a zero share of cost Medi-Cal card, and who are only using the confidentiality provisions of the minor consent regulations, reimbursement for minor consent services are 100 percent State General Fund Drug Medi-Cal. There is no federal financial participation.
- 1.14 "Outpatient Drug Free" means treatment, recovery, or rehabilitation services, with or without medication, including counseling and supportive services, for clients who do not reside in a treatment facility (also known as non-residential services). These services may be provided in an individual or group setting.
- 1.15 "Outreach/Intervention" means activities designed to encourage individuals in need of treatment/recovery services to undergo such treatment. Medical necessity for these activities need not be established.
- 1.16 "Parenting Woman" means a female who is in one or more of the following categories:
  - 1.16.1 Has custody of a dependent child 0-17.
  - 1.16.2 Is attempting to regain legal custody of a child 0-17.
  - 1.16.3 Has voluntarily placed a child 0-17 with a care giver and is attempting to parenting.



- 1.17 "Perinatal Drug Medi-Cal" means Drug Medi-Cal substance abuse services that are provided to pregnant or postpartum women. The Drug Medi-Cal defined postpartum period is 60 days from the date pregnancy terminated plus the days remaining until the end of the month in which the pregnancy terminated.
- 1.18 "Perinatal Outreach/Publicity" means services that identify and encourage eligible pregnant and parenting women in need of alcohol/drug treatment services to take advantage of these services or to inform members of the professional community about treatment services so that they may become referral sources.
- 1.19 "Provisional Rate" means the projected cost of services less projected revenues. This rate shall be based upon historical cost and actual cost data provided by CONTRACTOR to COUNTY. Provisional rates shall represent CONTRACTOR'S best approximation of actual costs. Provisional rates are the amounts payable to the CONTRACTOR pending settlement of the Cost Report.
- 1.20 "Projected Revenues" means an estimation of client fee collections, insurance collections, and other third party payments.
- 1.21 "Service documentation" means verification that a reimbursable unit of service has been rendered to a client. Service documentation shall include the following:
- 1.21.1 Dated progress notes with sufficient detail to make possible an evaluation of services.
  - 1.21.2 An original signature of the counselor rendering service unit on each progress note.
  - 1.21.3 Recorded clock hours for both group and individual services.
  - 1.21.4 Original client signature on dated attendance rosters for group services.
  - 1.21.5 Original client signature on all treatment plans.
- 1.22 "Unit of Service" means face-to-face contact on a calendar day. For outpatient drug free and day care habilitative the face-to-face unit is a client visit. For male, female or perinatal residential detoxification or treatment services the unit of service is a resident day. Only one face-to-face service contact per day is covered by Drug Medi-Cal, except for emergencies when an additional face-to-face contact may be covered for crisis intervention, or when a return visit is made to receive collateral services. To count as a unit of service, the second contact shall not duplicate the service provided on the first contact, and each contact shall be clearly documented in the client's record. The day of admission is a billable resident day. The day of discharge is not a billable resident day. If the day of admission and discharge are the same day it is a billable resident day.
- 1.23 "Youth Treatment Services" means alcohol and drug treatment services for individuals ages 12 through 17 (inclusive). It is strongly recommended that CONTRACTOR adhere to the California State Department of Alcohol and Drug Programs' "Youth Treatment Guidelines" (August 2002).

## **SECTION 2. GENERAL CONTRACT PROVISIONS**

### **Article 2.1 Administrator**

The COUNTY Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Alcohol and Drug Programs Administrator, or successor, hereinafter referred to as ADMINISTRATOR.

### **Article 2.2 Notices**

All notices 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. For purposes of this Agreement, any notice provided by COUNTY shall be given by ADMINISTRATOR. Notices to COUNTY from CONTRACTOR, and to CONTRACTOR from COUNTY shall be in duplicate and addressed as follows:

To COUNTY:            Gayle Erbe-Hamlin, Alcohol and Drug Programs Administrator  
                              County of El Dorado  
                              931 Spring Street  
                              Placerville, CA 95667

To CONTRACTOR: David Ashby, Executive Director  
                              New Morning Youth & Family Services, Inc.  
                              6765 Green Valley Road  
                              Placerville, CA 95667

### **Article 2.3 Term**

The term of this Agreement is July 1, 2005 through June 30, 2006. Further, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

### **Article 2.4 Contract Extension**

In the sole discretion of the COUNTY, this Agreement may be extended under the same terms and conditions set forth herein, from July 1, 2006 through September 30, 2006. In the event the County exercises its right to extend the Agreement, reimbursement for services shall be at the same provisional rates as specified herein, and shall not exceed one-fourth (1/4) of the total maximum obligation of this Agreement.

### **Article 2.5 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 2.6 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.

## SECTION 3. FISCAL PROVISIONS

### Article 3.1 Funding Types

CONTRACTOR shall maintain familiarity with federal and State laws, rules, and regulations (as cited in Article 6.12) so that it can correctly charge services described in the Scope of Work to funding types that allow payment for those services. This Agreement, which is for fiscal year 2005-2006, includes funds from federal fiscal years (FFY) 2005 and 2006 SAPT awards. SAPT funds from the FFY 2005 award are available for expenditure beginning July 1, 2005; they must be expended by June 30, 2006. SAPT funds from the FFY 2006 award become available October 1, 2005; they must be expended by June 30, 2006. This Agreement provides the following types of funding to CONTRACTOR:

- 3.1.1 *Substance Abuse Prevention and Treatment (SAPT) Discretionary:* These are federal block grant funds, which are to be used in a discretionary manner for substance abuse treatment, prevention, and recovery services.
- 3.1.2 *State General Fund Discretionary:* These are State funds, which are to be used in a discretionary manner to fund alcohol and other drug treatment services.
- 3.1.3 *State General Fund (SGF) Drug Medi-Cal:* These are State funds, which are to be used for providing DMC services to Medi-Cal clients. DMC services are defined in California Code of Regulations, Title 22.
- 3.1.4 *Federal Financial Participation (FFP) or Federal Match on SGF DMC:* This funding is the federal share of the Medi-Cal (Medicaid) Program. The match, which varies by year, is usually at or near 50 percent.

### Article 3.2 Amount of Funding

The total maximum obligation of COUNTY for services provided under this Agreement is set forth below, by funding type.

<u>Maximum FFY 04/05 Block Grant Obligation to be expended by June 30, 2006</u>		
SAPT Federal Block Grant Discretionary	FFY 04/05	\$16,200
SAPT Federal Block Grant HIV Set Aside	FFY 04/05	0
SAPT Federal Block Grant Youth Treatment	FFY 04/05	<u>0</u>
<i>Total Maximum FFY 04/05 Block Grant Obligation of This Agreement</i>		\$16,200
<u>Maximum FFY 05/06 Block Grant Obligation which may be carried over to County FY 06/07</u>		
SAPT Federal Block Grant Discretionary	FY 05/06	\$60,314
SAPT Federal Block Grant HIV Set Aside	FY 05/06	0
SAPT Federal Block Grant Youth Treatment	FY 05/06	<u>2,500</u>
<i>Total Maximum FFY 05/06 Block Grant Obligation of This Agreement</i>		\$62,814
<i>Total Maximum SAPT Block Grant Obligation of This Agreement</i>		\$79,014

<u>Maximum State General Fund Obligation</u>			
State General Fund Discretionary	FY 05/06		\$6,543
Perinatal State General Fund Discretionary	FY 05/06		<u>0</u>
<i>Total Maximum State General Fund Obligation Of This Agreement</i>			\$6,543

<u>Maximum Drug Medi-Cal Obligation*</u>			
State General Fund Drug Medi-Cal	FY 05/06		\$300
Estimated Federal Match to SGF Drug Medi-Cal	FY 05/06		300
Perinatal State General Fund Drug Medi-Cal	FY 05/06		0
Estimated Federal Match to Perinatal SGF Drug Medi-Cal	FY 05/06		<u>0</u>
<i>Total Maximum Drug Medi-Cal Obligation Of This Agreement*</i>			\$600

\*At the County's discretion additional Drug Medi-Cal funds may be paid to Contractor as reimbursement for allowable Drug Medi-Cal services if Contractor maximum funding amount has been exhausted but there are still Drug Medi-Cal funds remaining in the total El Dorado County Drug Medi-Cal allocation which are sufficient to cover the services rendered.

**TOTAL FY 05/06 CONTRACT AMOUNT \$86,157**

**Article 3.3 Provisional Payment Rates**

Following are the maximum payment rates for services included in Section 4, Scope of Work:

Intake (1 hour)	\$105.00
Assessments (1.5 hours)	\$157.00
Case Management (1 hour)	\$105.00
Outpatient Drug Free Client Visits:	
Group Session (Individual within a Group – 1.5 hours)	\$26.00
Individual Session (per hour)	\$105.00
Collateral/Family Visit (per hour)	\$105.00
Crisis Intervention Visit (per hour)	\$105.00
Day Care Habilitative (3 hours)	\$67.85

**Article 3.4 Compensation Method**

3.4.1 COUNTY shall pay CONTRACTOR for the actual costs of providing service, less any revenues actually received from client fees, insurance, and/or other third party payers, provided that:

- 3.4.1.1 Services are billed to COUNTY by unit of service at an amount not exceeding the provisional rates specified in Article 3.3 of this Agreement.
- 3.4.1.2 The total payments shall not exceed the COUNTY'S Total Maximum Obligation, by funding type, as set forth in Article 3.2 of this Agreement.

- 3.4.1.3 All CONTRACTOR costs must be allowable pursuant to applicable State and Federal laws, regulations, policies and procedures, as set forth in Article 6.12.
  - 3.4.1.4 Costs shall be reconciled annually in the cost report, as detailed in Article 3.9 of this Agreement. The cost report settlement is the process that determines whether provisional rates were an accurate representation of actual costs.
  - 3.4.1.5 Drug Medi-Cal services (if provided) shall be billed at the lower of allowable costs, usual and customary charges, or the Drug/Medi-Cal statewide maximum allowance.
- 3.4.2 COUNTY shall pay CONTRACTOR monthly in arrears. Monthly payments are provisional payments only, and subject to final settlement in accordance with Article 3.9 of this Agreement.

### **Article 3.5 Invoicing**

- 3.5.1 CONTRACTOR invoices shall be on forms approved, or provided by, ADMINISTRATOR and shall include all data required on such forms. All charges claimed on invoices shall identify the individual client who received the service being charged.
- 3.5.2 Invoices are due by the tenth (10<sup>th</sup>) day of the month following the month in which services were delivered. Payments to CONTRACTOR shall be released by COUNTY no later than forty-five (45) days after receipt of the correctly completed invoice and back-up forms.
- 3.5.3 Invoices submitted later than the last day of the month following the month in which services were delivered will be considered retroactive. Retroactive invoices shall be ineligible for payment unless there are extenuating circumstances that justify submission of such invoices, and the COUNTY has authorized retroactive billing in advance of the invoice submission date.
- 3.5.4 Invoices shall be submitted to COUNTY at the Public Health Department, Alcohol and Drug Programs Division, 415 Placerville Drive, Suite R, Placerville, CA 95667.
- 3.5.5 Invoices for October, January and April of the fiscal year shall be accompanied by an interim quarterly cost report.
- 3.5.6 All billings to COUNTY shall be supported, at CONTRACTOR'S facility, by source documentation including, but not limited to, ledgers, books, vouchers, journals, time sheets, payrolls, signed attendance rosters, appointment schedules, client data cards, client charts, schedules for allocating costs, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided. ADMINISTRATOR may require CONTRACTOR to submit documentation in support of the monthly billing and

reserves the right to determine the type and amount of such documentation. Patient demographic and identifying information, including social security numbers, may be required.

- 3.5.7 CONTRACTOR may not invoice for, and will not be reimbursed for, services provided beyond the expiration and/or termination of this Agreement, unless COUNTY has notified CONTRACTOR in writing of its intent to extend the Agreement pursuant to Article 2.4.

### **Article 3.6 Payment Withholding**

ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provisions of this Agreement. In addition, as a means to ensure continuous operation of CONTRACTOR'S facility, COUNTY may defer payments as described in Article 5.5 of this Agreement.

### **Article 3.7 Administrative Fee Reimbursement (Drug Medi-Cal)**

If CONTRACTOR receives Drug Medi-Cal funding under this Agreement, COUNTY shall realize 7.5 percent of the Drug Medi-Cal reimbursement for administrative fees. This amount shall be assessed upon CONTRACTOR'S monthly invoices.

### **Article 3.8 Availability of Funds**

The parties to this Agreement recognize and acknowledge that COUNTY is a political subdivision of the State of California. As such, El Dorado County 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.

In the event the State or federal government reduces, delays, or eliminates funding needed to carry out activities under this Agreement, in the sole discretion of the COUNTY this Agreement may be modified or cancelled in its entirety. Notice of intent to modify or cancel the Agreement pursuant to this paragraph shall be in writing and shall be delivered to CONTRACTOR as stated in Article 2.2. Such notice shall be sent to CONTRACTOR not later than three work days from the COUNTY'S receipt of notification of the funding reduction, delay, or termination. Contract modification or cancellation pursuant to this paragraph shall become effective on the date the reduction, delay, or elimination of funds is imposed upon the COUNTY, or on a later date determined by the COUNTY and at the sole discretion of the COUNTY.

### **Article 3.9 Cost Report**

3.9.1 CONTRACTOR shall submit a Cost Report to COUNTY on or before October 1 in the year in which this Agreement is terminated. CONTRACTOR shall prepare the Cost Report in accordance with all Federal, State, and County requirements and generally accepted accounting principles. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice. Such costs and allocations shall be supported by source documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice.

CONTRACTOR shall document that costs are reasonable and allowable and directly or indirectly related to the services provided hereunder. The Cost Report shall be the final financial record of services rendered under this Agreement for subsequent audits, if any.

Final Settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues, not to exceed COUNTY'S Total Maximum Obligations as set forth in Article 3.1 of this Agreement. CONTRACTOR shall not claim expenditures to COUNTY which are not reimbursable pursuant to applicable Federal, State and County laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for a non-reimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash within forty-five (45) days of submission of the Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

If the Cost Report shows the actual and reimbursable cost of services provided pursuant to this Agreement, less applicable revenues, is lower than the aggregate of monthly provisional rate payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such reimbursement shall be made, in cash, with the submission of the Cost Report. If such reimbursement is not made by CONTRACTOR within forty-five (45) days after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.



If the Cost Report shows the actual and reimbursable cost of services provided pursuant to this Agreement, less applicable revenues, is higher than the aggregate of monthly provisional rate payments to CONTRACTOR, then COUNTY shall pay CONTRACTOR the difference within forty-five (45) days after verification of amount owed, provided such payment does not exceed the Total Maximum Obligation of this Agreement. Should the amount owed for Drug/Medi-Cal exceed the total obligation of this Agreement, an amendment to this Agreement would be required.

The following attestation shall be attached to the Cost Report:

" I, \_\_\_\_\_ (Agency Director or Board of Director Chairman) \_\_\_\_\_, hereby declare under penalty of perjury under the laws of the State of California that I have executed the accompanying Cost Report and supporting documentation prepared by \_\_\_\_\_ for the cost report period beginning \_\_\_\_\_ and ending \_\_\_\_\_ and that, to the best of my knowledge, cost reimbursed through this Agreement are reasonable and allowable and directly or indirectly related to the services provided and that this Cost Report is a true, correct, and complete statement from the books and records of \_\_\_\_\_ in accordance with applicable instructions, except as noted. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, California."

- 3.9.2 When the State reconciliation of Drug/Medi-Cal costs occurs, if the State settlement shows that the aggregate of monthly payments to CONTRACTOR for covered Drug/Medi-Cal services provided under this agreement exceeds the lower of CONTRACTOR'S allowable cost, the usual and customary charge, or the maximum allowance, in accordance with Title 22, Section 51516.1, CONTRACTOR shall remit the difference to COUNTY. CONTRACTOR shall pay COUNTY the difference within forty-five (45) days after verification of amount owed or the completion of an Appeal Process through County, whichever comes first. In the event of a State Alcohol and Drug cost report audit and/or program audit, both State General Fund and Federal Medicaid portions of all CONTRACTOR disallowances shall be reimbursed to COUNTY within forty-five (45) days of completion of an appeal process following receipt of a final Audit Report or the completion of an Appeal Process through County, whichever comes first.

When the State reconciliation of Drug/Medi-Cal costs occurs, if the State settlement shows that the aggregate of monthly payments to CONTRACTOR for covered Drug/Medi-Cal services provided under this agreement is lower than CONTRACTOR'S allowable cost, the usual and customary charge, or the maximum allowance, in accordance with Title 22, Section 51516.1, COUNTY shall remit to CONTRACTOR the amount underpaid, not to exceed the Total Maximum Drug/Medi-Cal Obligation for the specific contract year's agreement. This amount shall be processed to CONTRACTOR within sixty (60) days of completion of an appeal in accordance with the Audit Appeal Process described in the FY 99/01 Combined NNA/Drug/Medi-Cal State/County Contract.

### **Article 3.10 Financial Statements**

CONTRACTOR shall obtain an annual financial statement audit in accordance with Government Auditing Standards. If CONTRACTOR'S total federal expenditures, excluding Federal Medical/Medicaid, are \$300,000 or more, CONTRACTOR must obtain an audit in accordance with OMB Circular A-133.

## SECTION 4. Scope of Work

### Article 4.1 Alcohol and Drug Treatment Services

CONTRACTOR shall maintain familiarity with federal and State laws, rules, and regulations (as cited in Article 6.12) so that it can correctly charge services described in this Scope of Work to funding types that allow payment for these services. CONTRACTOR agrees to provide the substance abuse services listed below.

- 4.1.1 *Intake:* Demographic, financial, health, family, living situation and other pertinent information shall be collected as necessary to establish client records and support reporting requirements. Intake also includes dissemination of required information to clients including but not limited to CONTRACTOR confidentiality policies, complaint procedures, and admission procedures.
- 4.1.2 *Assessments:* Initial assessments of clients shall be developed using appropriate assessment and screening tools, as identified in 4.2.1 below.
- 4.1.3 *Treatment Plans:* An individualized treatment plan shall be developed for each client using information obtained in the intake and assessment process. The treatment plan must be completed within thirty (30) days of the date the client is admitted to treatment. The treatment plan shall identify problems to be addressed, goals to be reached, action steps, target dates, type and frequency of services to be provided, and the assigned counselor. Treatment plans must be maintained in client records, and kept current as treatment progresses.
- 4.1.4 *Case Management:* This function shall be performed to integrate and coordinate all necessary services and to help ensure successful treatment and recovery. Case management may include evaluating payment resources, determining the nature of services to be provided, planning the delivery of treatment services, identifying appropriate treatment resources, referring clients to other resources as appropriate, monitoring client progress, documenting treatment, participating in case conferences, and other similar types of activities.
- 4.1.5 *Client treatment:* Treatment shall be delivered through a program that offers services at different levels of intensity depending on individual client needs. Treatment shall be consistent with findings that result from administration of the ASAM PPC-2. Clients admitted to treatment may be tested for drug usage; however, the cost of drug testing shall be included within Contractor's rate for service and shall not be billed separately. Following is a description of the required services:
  - 4.1.5.1 *Low intensity outpatient education and treatment services* are those services or activities provided to clients who are willing to cooperate in their own treatment but who need motivating and monitoring to sustain the recovery process. These services are appropriate for individuals who are able to maintain abstinence or control their substance use and to pursue recovery

goals with minimal support. Participants served at this level are in a supportive recovery environment or have the necessary coping skills to deal with a non-supportive recovery environment. Outpatient drug free (individual and/or group), health/addiction education, crisis intervention, and/or collateral visits may be provided at this level.

- 4.1.5.2 *High intensity outpatient education and treatment services* are those services provided to clients whose resistance to treatment is high enough to require a structured program, but not so high as to render outpatient treatment ineffective. These services may also be indicated for individuals whose addiction symptoms intensify while participating in low intensity outpatient services. Outpatient drug free (individual and/or group), day care habilitative, health/addiction education, crisis intervention, and/or collateral visits may be provided at this level.

## **Article 4.2 Support Tasks and Activities**

### 4.2.1 Assessment Tools

CONTRACTOR shall maintain the capability to administer the ASI-Lite, Adolescent ASI assessment instrument, ASAM PPC-2 Patient Placement Criteria, and an appropriate screening instrument such as the Substance Abuse Subtle Severity Index (S.A.S.S.I.).

### 4.2.2 Client Admission to Treatment

- 4.2.2.1 CONTRACTOR shall receive requests for service directly from clients. When a request for service is made by any eligible client, CONTRACTOR shall ensure that services are initiated with reasonable promptness. Waiting lists of more than 30 days for services subsidized under this Agreement shall be reported in writing to the ADMINISTRATOR no later than the 15<sup>th</sup> day of each month.
- 4.2.2.2 CONTRACTOR agrees to admit on a priority basis pregnant women and/or HIV-positive individuals, and to advise individuals seeking treatment of these priority admission provisions. CONTRACTOR may not require clients to disclose HIV status; however, clients may volunteer this information.
- 4.2.2.3 CONTRACTOR shall develop and make available to the public a written copy of its admission policy and procedure and must ensure that said policy complies with all applicable State and federal requirements concerning admission of clients into treatment.
- 4.2.2.4 CONTRACTOR shall establish written procedures informing clients of their rights, including the right to file a complaint alleging discrimination, violation of civil rights, or any type of inappropriate or offensive treatment by Contractor staff. Contractor shall provide a copy of its complaint procedures to all clients upon their admission to treatment. These procedures shall describe the specific

steps clients are to follow when filing complaints and the action that Contractor will take to resolve client complaints.

#### 4.2.3 Revenue Collection

- 4.2.3.1 *Client Fees:* CONTRACTOR shall charge a fee to clients for whom services are provided pursuant to this Agreement, assessing ability to pay on the basis of individual expenses in relation to income, assets, estates, and responsible relatives. Determination of fees shall be performed in accordance with a fee scale developed by CONTRACTOR and approved by the ADMINISTRATOR. Client fees shall be based upon the person's ability to pay for services, but shall not exceed the actual cost of service provided. No person shall be denied services because of an inability to pay.
- 4.2.3.2 *Client Financial Assessment:* All clients whose alcohol and drug treatment services are subsidized under this Agreement shall be certified by CONTRACTOR as unable to pay the amount charged to this Agreement. The certification of each client who is unable to pay shall be documented in writing on a Client Financial Assessment Form, which is developed by CONTRACTOR and approved by the ADMINISTRATOR. This form shall be maintained by CONTRACTOR in the client's record.
- 4.2.3.3 *Payment of Last Resort:* In compliance with Federal Grants Management Guidelines, CONTRACTOR must ensure that federal block grant funds are the "payment of last resort" for alcohol and drug treatment services subsidized under this Agreement. CONTRACTOR shall make every reasonable effort, including the establishment of systems for eligibility determination, billing and collection, to collect reimbursement for the costs of providing services to persons who are entitled to benefits under the Social Security Act, including Title XVIII and Title XIX programs, any State compensation program, any other public assistance program for medical expenses, any grant program, any private health insurance or any other benefit program.
- 4.2.3.4 *Third-Party Revenue:* CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served hereunder may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR'S usual and customary charges.
- 4.2.3.5 *Other Revenues:* CONTRACTOR shall charge for services and supplies used by persons other than individuals or groups eligible for services pursuant to this Agreement.
- 4.2.3.6 *Screening and Referral:* CONTRACTOR shall screen clients to determine their potential eligibility for Veterans Health Care Services and refer them to a Veterans Administration (VA) facility if it appears eligibility may exist. The nearest VA facility is:

Sacramento VA Medical Center  
10535 Hospital Way  
Mather, CA 95655  
(916) 366-5366

#### 4.2.4 Communicable Diseases

4.2.4.1 CONTRACTOR shall provide tuberculosis (TB) services, directly or by referral to the El Dorado County Public Health Department or another appropriate provider. These TB services shall consist of the following:

4.2.4.1.1 Counseling with respect to tuberculosis.

4.2.4.1.2 Testing to determine whether the individual has been infected and to determine the appropriate form of treatment.

4.2.4.1.3 Provision for, or referral of, infected clients for medical examination and treatment.

4.2.4.2 A Health Questionnaire shall be completed for all clients admitted for residential or nonresidential alcohol an/or other drug services. CONTRACTOR shall use either form ADP 10100-A-E for its health questionnaire or it may develop one which contains at a minimum, the information requested in ADP 10100-A-E. CONTRACTOR staff shall review each completed questionnaire. When appropriate, the client shall be referred to licensed medical professionals for physical and laboratory examinations. A medical clearance or release shall be obtained prior to admission whenever a client is referred to a licensed medical professional for such examinations.

4.2.4.3 Prior to obtaining a medical clearance, CONTRACTOR shall not accept persons who have communicable diseases, with the exception of persons with asymptomatic HIV (Human Immunodeficiency Virus) disease, symptomatic HIV disease and AIDS (Acquired Immunodeficiency Syndrome) Indicator Conditions.

4.2.4.4 CONTRACTOR shall perform activities that help prevent and delay the progression of HIV infection. This includes encouraging clients to receive testing, collecting test samples (which are then sent to a lab for processing), and providing both pre and post test counseling.

#### 4.2.5 Interim Services

All persons who are not admitted into treatment within fourteen (14) days due to lack of capacity, and who place their names on the waiting list for admission, shall be provided interim services. Interim services shall consist of tuberculosis (TB) counseling, voluntary testing, referral

for medical evaluation, if appropriate, and voluntary and confidential HIV testing, pre- and post-test counseling. For pregnant women, interim services shall also include counseling on the effects of alcohol and drugs on the developing fetus; and referral to prenatal medical care services. Interim services may be provided directly or by referral to the El Dorado County Public Health Department or another appropriate provider. Provision of interim services shall be documented on the Drug Abuse Treatment Access Report (DATAR) and reported monthly to the State Department of Alcohol and Drug Programs.

#### 4.2.6 Participation in Meetings

CONTRACTOR shall participate in individual and/or group provider meetings as requested by the COUNTY.

#### 4.2.7 Participation in Training

CONTRACTOR shall attend relevant substance abuse training programs and/or conferences as requested by the COUNTY.

#### 4.2.8 Record Keeping

4.2.8.1 *Clinical Records*: CONTRACTOR shall preserve and make available its clinical records for services rendered under this Agreement for a period of five (5) years from the date of final payment under this Agreement, and for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by either of the following:

4.2.8.1.1. If this Agreement is terminated or partially terminated, all of the records relating to work terminated shall: a) be preserved and made available for a period of five (5) years from the date of termination; or b) at the sole option of the COUNTY, immediately become the property of the COUNTY and shall be delivered by CONTRACTOR to the COUNTY.

4.2.8.1.2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later.

4.2.8.2 *Statistical Records*: CONTRACTOR shall keep all statistical data and records required by the ADMINISTRATOR on forms and/or disks provided by the ADMINISTRATOR. These records shall be available for inspection as required by the ADMINISTRATOR.

4.2.8.3 *Subcontractor Records*: CONTRACTOR shall include in all subcontracts entered into with third parties to facilitate the provision of Services hereunder, the following clause:

*"(Name of vendor or subcontractor) agrees to maintain and preserve, until five (5) years after termination of CONTRACTOR'S agreement with the County of El Dorado, pertinent books, documents, papers and records of (name of vendor or subcontractor) related to this (purchase order or subcontract) and to permit the County to have access to, to examine and to audit any of such pertinent records."*

4.2.8.4 *Financial Records*: CONTRACTOR shall prepare and maintain accurate and complete financial records of its costs and operating expenses. Such records shall reflect the actual costs of the service for which payment is claimed in accordance with generally accepted principles of accounting. Eligibility determination results and fees charged to and collected from persons receiving services, together with a record of all billings sent and revenues received from any source, on behalf of persons treated pursuant to this Agreement, must be reflected in CONTRACTOR'S financial records. Any apportionment of or distribution of costs, including direct costs, to or between programs or cost centers of CONTRACTOR shall be made in accordance with generally accepted accounting principles.

#### 4.2.9 Reporting

4.2.9.1 *State Data Submission*: CONTRACTOR shall submit to ADP in accordance with Health and Safety Code Section 11758.12 (d), that information required by the State in a manner identified by, or on forms provided by, ADP. The data shall include, but is not limited to: Drug and Alcohol Treatment Access Report (DATAR), California Alcohol and Drug Data System (CADDSS) Participant Records, California Alcohol and Drug Data Systems (CADDSS) Provider Summary; and Drug and Alcohol Services Information System (DASIS) Uniform Facilities Data Set (UFDS).

4.2.9.2 *County Data Submission*: CONTRACTOR shall report to the COUNTY any problems in implementing the provisions of this Agreement, staff changes, status of licenses and/or certifications, changes in modalities and/or populations served, and reasons for any such changes. Further, when requested to do so by the COUNTY, CONTRACTOR shall submit documents related to client services, administrative activities, or other program operation functions.

4.2.9.3 *Board of Director's Minutes*: CONTRACTOR shall provide ADMINISTRATOR the minutes of all CONTRACTOR'S monthly Board of Director's meetings to include monthly Treasurer's report.



4.2.9.4 *Notification of Injury or Death:* CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature which may expose COUNTY to liability. Such occurrences shall include, but not be limited to: accidents, injuries, death, acts of negligence, and loss of or damage to any COUNTY property in possession of CONTRACTOR.

## **SECTION 5. PERFORMANCE REQUIREMENTS**

### **Article 5.1 Code of Conduct**

CONTRACTOR shall establish a written Code of Conduct for employees, volunteers, interns and the Board of Directors which shall include but not be limited to, standards related to the use of drugs and/or alcohol; staff relationships with clients; prohibition of sexual conduct with clients; and conflict of interest. Prior to providing any services pursuant to this Agreement, all employees, volunteers and interns shall agree, in writing, to maintain the standards set forth in the Code of Conduct. A copy of the Code of Conduct shall be provided to each client and shall be posted in writing in a prominent place in CONTRACTOR'S facility(ies).

### **Article 5.2 Cultural Competence**

CONTRACTOR shall, to the extent feasible, provide services pursuant to this Agreement in a culturally competent manner by recruiting, hiring and maintaining trained, experienced staff who are able to deliver services with sensitivity toward and respect for clients from diverse backgrounds. CONTRACTOR staff shall complete a minimum of one (1) cultural-sensitivity training per year.

### **Article 5.3 Confidentiality**

CONTRACTOR shall conform to and monitor compliance with all State and federal statutes and regulations regarding confidentiality, including the confidentiality of information requirements of Part 2, Title 42, Code of Federal Regulations; Welfare and Institutions Code, Section 14100.2; Section 11977, Division 10.5 of the Health and Safety Code; and Title 22, California Code of Regulations, Section 51009.

CONTRACTOR shall ensure that no list of persons receiving services under this Agreement is published, disclosed, or used for any purpose except for the direct administration of this program or other uses authorized by law that are not in conflict with requirements for confidentiality contained in Title 42, Code of Federal Regulations, Part 2; Welfare and Institutions Code, Section 14100.2; Health and Safety Code, Section 11977; and Title 22, California Code of Regulations, Section 51009.

Prior to providing any services pursuant to this Agreement, all employees, subcontractors, and volunteer staff or interns 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.

### **Article 5.4 Employee Qualifications**

Contractor shall only employ individuals as substance abuse counselors who meet all applicable State requirements pertaining to certification and/or licensure, and who are qualified and competent to perform the tasks assigned to them. Contractor shall regularly evaluate the performance of all its treatment staff and implement immediate corrective action if any

performance problems are identified. The County may request in writing that the Contractor investigate incidents of suspected poor performance by Contractor treatment staff, and the Contractor shall do so within the timeframes and under the terms contained in the County's written request.

#### **Article 5.5 HIPAA**

Under this Agreement, CONTRACTOR will provide services to COUNTY, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to CONTRACTOR for the purposes of carrying out its obligations. CONTRACTOR agrees to comply with all the terms and conditions of Exhibit A, HIPAA Business Associate Agreement, attached hereto and made by reference a part hereof, regarding the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

#### **Article 5.6 Continuous Operation**

CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff required to meet applicable State, Federal and County requirements, and which are necessary for the provision of services hereunder.

To ensure that services are available continuously throughout the term of this Agreement, CONTRACTOR shall plan for even expenditure of funds provided by this Agreement throughout the term of the Agreement. That is, one twelfth of the total amount included in each funding type (except Drug Medi-Cal, which is an entitlement) shall be budgeted for service delivery each month. To the maximum extent possible, CONTRACTOR shall deliver services each month that are commensurate with one twelfth of the total dollar amount available to pay for those services.

COUNTY reserves the right to defer payment of any amount included on a monthly invoice that exceeds one twelfth of the total amount available within the funding type being charged. Further, in the event CONTRACTOR expends the entire amount obligated by this Agreement in any funding type before the end of the term of the Agreement, and the COUNTY has not previously deferred payment, the COUNTY offers no assurance that any additional amounts will be made available.

#### **Article 5.7 Inspections and Audits**

Because the compensation paid to CONTRACTOR pursuant to this Agreement is comprised of both federal and State funds, CONTRACTOR shall comply with the following requirements:

- 5.7.1 ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any of their authorized representatives, shall have access to any books, documents, and records, including but not limited to, medical and client records, of CONTRACTOR which such

persons deem pertinent to this Agreement, for the purpose of conducting an audit, evaluation, or examination, or making transcripts during the periods of retention set forth in Article 5.7 to this Agreement. Such persons may at all reasonable times, inspect or otherwise evaluate the services provided pursuant to this Agreement, and the premises in which they are provided or administered.

- 5.7.2 CONTRACTOR shall actively participate and cooperate with any persons specified in 5.6.1 above in any evaluation or monitoring of services provided pursuant to this Agreement, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.
- 5.7.3 CONTRACTOR shall obtain an annual financial statement audit in accordance with Government Auditing Standards. If CONTRACTOR'S total federal expenditures, excluding Federal Medi-Cal/Medicaid, are \$300,000 or more, CONTRACTOR must obtain an audit in accordance with OMB Circular A-133.
- 5.7.4 CONTRACTOR shall maintain client records, books, documents, records and other evidence, accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute "records" for purposes of this section. Such records shall clearly reflect the cost and scope of the services provided to each client.
- 5.7.5 CONTRACTOR'S facility, office (or such parts thereof as may be engaged in the performance of this Agreement) and its records shall be subject at all reasonable times to inspection and audit reproduction by COUNTY.
- 5.7.6 Within fourteen (14) days after final audit is approved by Agency's Board of Directors, CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR'S operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Agreement.
- 5.7.7 Following any audit report, in the event of non-compliance with applicable laws and regulations governing funds provided through this Agreement or serious deficiencies in CONTRACTOR'S internal control structure, COUNTY may terminate this Agreement as provided for in Article 6.7, or direct CONTRACTOR to immediately implement appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in writing within fifteen (15) days after receiving notice from COUNTY.
- 5.7.8 CONTRACTOR will have two (2) months to implement a corrective action plan and to submit to COUNTY a written report of corrective action taken. Failure to implement said corrective action plan shall be cause for termination of this Agreement.

- 5.7.9 COUNTY shall respond to all audits of CONTRACTOR with a reconciliation to COUNTY records. If COUNTY concurs with State findings, final payment of CONTRACTOR'S assessed disallowances shall be subject to provisions of Article 3.9 of this Agreement. If COUNTY owes CONTRACTOR, reimbursement shall be subject to provisions of Article 3.9 of this Agreement.
- 5.7.10 All CONTRACTOR'S funding records related to this Agreement shall be subject to audit by COUNTY at any time during the term of this Agreement, and for a period that extends through any required records retention period, should it be requested by COUNTY'S Auditor/Controller. In the event that CONTRACTOR has more than one funding agreement with COUNTY, CONTRACTOR shall maintain an individual schedule of expenses for each COUNTY agreement, such that can be reconciled to an audit of any individual agreement. If CONTRACTOR receives in excess of \$500,000 in total funding from COUNTY in any one fiscal year, CONTRACTOR must have an independent/individual audit of each COUNTY agreement.

#### **Article 5.8 Record Retention**

Financial and client records shall be retained by CONTRACTOR for five (5) years from the date of submission of the Cost Report that pertains to this Agreement. 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 or federal governments, shall be retained by CONTRACTOR until disposition of such appeals, litigation, claims or exceptions is completed.

#### **Article 5.9 Report and Other Document Submission Timeframes**

CONTRACTOR shall comply with the following timeframes for submitting reports and other documents required under the terms of this Agreement:

- 5.9.1 *State Data Submission* (as defined in 4.2.9.1): Monthly reports shall be postmarked no later than the seventh (7<sup>th</sup>) day of each calendar month for receipt by the State Department of Alcohol and Drug Programs no later than the tenth (10<sup>th</sup>) day of each calendar month.
- 5.9.2 *County Data Submission* (as defined in 4.2.9.2): License and/or certification changes, changes in modalities and/or populations served, documents related to client services, administrative activities, or other program operation functions shall be submitted within five (5) working days from the date of the event or request from the COUNTY.
- 5.9.3 *Board of Director's Minutes* (as defined in 4.2.9.3): Submit within thirty (30) calendar days from the date of completion.
- 5.9.4 *Notification of Injury or Death* (as defined in 4.2.9.4): Submit within twenty-four (24) hours of the event or date the event becomes known.

- 5.9.5 *Cost Report* (as defined in Article 3.9): Submit on or before October 1 of the year in which this Agreement is terminated.
- 5.9.6 *Interim Quarterly Cost Report* (as defined in 3.5.5): Submit with invoices for October, January, and April. As per 3.5.2, invoices are due by the tenth (10<sup>th</sup>) of the month following the month covered by the invoice.
- 5.9.7 *Financial Statement* (as defined in Article 3.10): Provide ADMINISTRATOR two (2) copies of the agency's annual financial statement audit within fourteen (14) days after final audit is approved by Agency's Board of Directors.
- 5.9.8 *Sliding Fee Scale and Client Financial Assessment Form* (as defined in 4.2.3.1 and 4.2.3.2): Provide to ADMINISTRATOR no later than July 15 of the year in which this Agreement commences.
- 5.9.9 *Waiting Lists* (as defined in 4.2.2.1): If wait time exceeds 30 days for any client, report in writing to ADMINISTRATOR no later than the 15<sup>th</sup> day of each month.

#### **Article 5.10 Use of Funds**

5.10.1 Pursuant to Part 92 of the Federal Grants Management Handbook, Subpart L(a)(2), Substance Abuse and Prevention Block Grant (SAPT) restrictions on expenditures, CONTRACTOR shall not use SAPT funds provided by this Agreement for the following purposes:

- 5.10.1.1 Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.
- 5.10.1.2 Providing inpatient hospital services or purchasing major medical equipment.
- 5.10.1.3 Satisfying any expenditure of non-Federal funds as a condition for the receipt of Federal funds (matching).
- 5.10.1.4 Making cash payments to intended recipients of services through this Agreement.
- 5.10.1.5 Contracting or subcontracting with any entity other than an individual or nonprofit entity.
- 5.10.1.6 Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, Section 319, U.S.C.
- 5.10.1.7 Paying an individual salary or compensation for services at a rate exceeding \$120,000 per year.

5.10.1.8 Supplanting current funding for existing services.

5.10.1.9 Fund-raising.

5.10.2 Unless otherwise specified in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by this Agreement for the following purposes:

5.10.2.1 Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR'S staff, members of Board of Directors, or clients.

5.10.2.2 Making personal loans to CONTRACTOR'S staff or members of the Board of Directors, or making salary advances or giving bonuses to CONTRACTOR'S staff.

5.10.2.3 Reimbursement of CONTRACTOR'S Board of Directors members for expenses or services.

5.10.2.4 Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.

#### **Article 5.11 Religious Activity**

No State or federal funds shall be used by the CONTRACTOR to provide direct, immediate, or substantial support to any religious activity.

#### **Article 5.12 Smoking Prohibitions**

CONTRACTOR shall comply with Public Law 103-227, also known as the Pro-Children Act of 1994, which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education, or library services to children under the age of 18 if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services that are provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, and Children (WIC) coupons are redeemed. For purposes of this Agreement, residential alcohol and drug services are not considered to be inpatient hospital drug or alcohol treatment.

### **Article 5.13 Drug-Free Workplace**

CONTRACTOR shall comply with the requirements of the Drug-Free Work Place Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free work place by taking the following actions:

- 5.13.1 Publish a statement notifying all employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's work place and specifying the actions that will be taken against employees for violations of the prohibitions as required by the Government Code, Section 8355(a).
- 5.13.2 Establish a drug-free awareness program as required by the Government Code, Section 8355(b) to inform all employees about the following:
  - 5.13.2.1 The dangers of drug abuse in the work place;
  - 5.13.2.2 The person's or organization's policy of maintaining a drug-free work place;
  - 5.13.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
  - 5.13.2.4 The penalties that may be imposed upon employees for drug abuse violations.
- 5.13.3 Provide, as required by the Government Code, Section 8355(c), that every employee engaged in the performance of the contract:
  - 5.13.3.1 Be given a copy of the CONTRACTOR'S drug-free policy statement; and
  - 5.13.3.2 As a condition of employment, agree to abide by the terms of the statement.
- 5.13.4 Failure to comply with requirements for a drug-free work place may result in suspension of payments under the Agreement or termination of the Agreement or both.



## **SECTION 6. CONTRACT TERMS AND CONDITIONS**

### **Article 6.1 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 the services to be provided, in whole or in part, to any other person or entity without prior written consent of the COUNTY.

### **Article 6.2 California Forum and Law**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. CONTRACTOR waives any removal rights it might have under Code of Civil Procedure Section 394.

### **Article 6.3 Conflict of Interest**

6.3.1 Contractor Responsibility: CONTRACTOR covenants that it presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other subcontract 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.

6.3.2 County Responsibility: 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 6.4 Contract Modifications**

This Agreement, together with Exhibit A attached hereto and incorporated herein by reference, fully expresses all understandings of COUNTY and CONTRACTOR with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by both parties.

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.

COUNTY shall retain the right to amend this agreement at any time to reallocate unexpended funds of any type, including Drug Medi-Cal, to support treatment activities under other agreements.

COUNTY shall amend this agreement to provide sufficient State General Fund Drug Medi-Cal to match allowable federal Medicaid reimbursements for any increase in Drug Medi-Cal services provided to beneficiaries by CONTRACTOR.

#### **Article 6.5 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 the term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00

#### **Article 6.6 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 6.7 Default, Termination, or Cancellation**

6.7.1 *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 in 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 by 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.

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

- 6.7.3 *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 program service or activity, or meet any requirement, term, or condition of this Agreement.
- 6.7.4 *Termination or Cancellation without Cause*: COUNTY may terminate this Agreement in whole or in part for any reason, by giving thirty (30) calendar days written notice to CONTRACTOR. If such 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 the COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obliged to pay more than the Total Maximum Obligation of the Agreement. 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. 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.
- 6.7.5 COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence of any of the following events:
- 6.7.5.1. The loss by CONTRACTOR of legal capacity.
  - 6.7.5.2. Cessation of services.
  - 6.7.5.3. The delegation or assignment of CONTRACTOR'S services operation or administration to another entity without written approval by ADMINISTRATOR.
  - 6.7.5.4. The continued incapacity of CONTRACTOR to perform duties required pursuant to this Agreement.
  - 6.7.5.5. Unethical conduct or malpractice by any person providing or supervising services pursuant to this Agreement or by any person administering program or providing programmatic fiscal management; provided, however, COUNTY may waive this option if CONTRACTOR removes such person from employment or from serving persons treated or assisted pursuant to this Agreement.
  - 6.7.5.6. Failure to implement a corrective action plan in accordance with 5.6.7 and 5.6.8 of this Agreement.
  - 6.7.5.7. The inability of CONTRACTOR to maintain all necessary licenses in accordance with Article 6.13 of this Agreement.
  - 6.7.5.8. Non-compliance with Article 6.16 and/or Article 6.17 of this Agreement.

- 6.7.6 After receiving a Notice of Termination CONTRACTOR shall do the following:
- 6.7.6.1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of quality care and prudent business practice.
  - 6.7.6.2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract performance during the remaining Agreement term.
  - 6.7.6.3. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.
  - 6.7.6.4. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with their best interests.
  - 6.7.6.5. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any Equipment and supplies purchased fully and explicitly for the purposes of this with funds provided by COUNTY.
  - 6.7.6.6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.
  - 6.7.6.7. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personnel services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.
- 6.7.7 The rights and remedies of COUNTY provided in this Article shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **Article 6.8 Failure to Meet Performance Requirements**

Should CONTRACTOR fail to meet any of the performance requirements listed in Section 5, at its sole discretion the COUNTY may withhold or delay payments as provided for in Article 3.6 and/or terminate the Agreement as provided for in Article 6.7.

#### **Article 6.9 Indemnity**

To the fullest extent of the law, CONTRACTOR shall defend, indemnify, and hold the COUNTY 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 provided 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 6.10 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 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 6.11 Insurance**

- 6.11.1 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:
- 6.11.1.1 Full Worker's Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California.
  - 6.11.1.2 Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
  - 6.11.1.3 Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.
  - 6.11.1.4 Professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.
- 6.11.2 CONTRACTOR shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

- 6.11.3 The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- 6.11.4 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 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 the Risk Management Division 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.
- 6.11.5 The certificate of insurance must include provisions that state the following:
- 6.11.5.1 The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to COUNTY, and;
  - 6.11.5.2 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 all liability policies except worker's compensation and professional liability insurance policies.
- 6.11.6 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 in excess of the CONTRACTOR'S insurance and shall not contribute with it.
- 6.11.7 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.
- 6.11.8 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.
- 6.11.9 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.
- 6.11.10 CONTRACTOR'S obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

- 6.11.11 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.
- 6.11.12 Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the COUNTY.

**Article 6.12 Laws and Rules**

CONTRACTOR shall comply with, and accept as binding, all applicable governmental laws, regulations, policies, and standards as they exist now or may be hereafter amended or changed. These laws, regulations, policies, and standards shall include, but not be limited to, the following:

- 6.12.1 California State Department of Alcohol and Drug Programs Certification Standards (July 1999).
- 6.12.2 California State Department of Alcohol and Drug Programs Perinatal Services Network Guidelines (1997).
- 6.12.3 California Health and Safety Code, Divisions 10.5 and 10.6, and Section 11758.12(d).
- 6.12.4 California Code of Regulations, Title 22.
- 6.12.5 California Code of Regulations, Title 9, Division 4.
- 6.12.6 Code of Federal Regulations (CFR), Title 21, Title 41, Title 42, Title 45.
- 6.12.7 California State Department of Health and Human Services Health Care Financial Administration Manual 15.
- 6.12.8 California Welfare and Institutions Code, Section 14100.2.
- 6.12.9 Part 92 of the Federal Grants Management Handbook, Subpart L(a)(2).
- 6.12.10 Title 31, Section 319, U.S.C.
- 6.12.11 OMB Circular A-133.
- 6.12.12 Public Law 103-227, also known as the Pro-Children Act of 1994.
- 6.12.13 Public Law 106-310, which addresses nondiscrimination and institutional safeguards for religious providers, and which is implemented through Title 42, CFR, Part 54.

6.12.14 Drug-Free Work Place Act of 1990 (Government Code Section 8350 et seq.).

### **Article 6.13 Licenses**

CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws or regulations of the United States, the State of California, COUNTY or other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of the appeal, such permits, licenses, approvals, certificates, waivers and exemptions. Said inability shall be cause for termination of this Agreement.

### **Article 6.14 Literature**

Any new literature, including educational and promotional materials, distributed by CONTRACTOR for purposes directly related to this Agreement shall indicate that CONTRACTOR'S services are supported by County, State and/or federal funds, as appropriate.

### **Article 6.15 Unlawful Use Messages**

CONTRACTOR agrees that information produced through these funds, and which pertains to drug and alcohol-related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program. Additionally, no aspect of a drug- or alcohol-related program shall include any message on the responsible use, if the use is unlawful (Health and Safety Code Section 11999). By signing this agreement, the CONTRACTOR agrees to enforce these requirements.

### **Article 6.16 Nondiscrimination In Employment**

6.16.1 CONTRACTOR certifies compliance with California Government Code, Section 12990 and California Code of Regulations, Title II, Division 4, Chapter 5, in matters related to the development, implementation and maintenance of a nondiscrimination program. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex or sexual orientation. CONTRACTOR shall ensure that employees and applicants for employment are not subject to discrimination in matters which include but are not limited to: hiring, evaluation, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, career development opportunities, and selection for training, including apprenticeship.

6.16.2 CONTRACTOR agrees to post, in conspicuous places, notices to all employees and applicants for employment setting forth the provisions of the Equal Opportunity Act [42 USC 2000(e)] in conformance with Federal Executive Order No. 11246. CONTRACTOR



agrees to comply with the provisions of the Rehabilitation Act of 1973 (29 USC 794).

6.16.3 CONTRACTOR shall give written Notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreements.

6.16.4 In the event of non-compliance with this Article, or as otherwise provided by State and federal law, this Agreement may be canceled, terminated or suspended in whole or in part and CONTRACTOR may be declared ineligible for further contracts involving State or federal funds.

#### **Article 6.17 Nondiscrimination In Services, Benefits and Facilities**

6.17.1 CONTRACTOR certifies under the laws of the State of California that the it shall not unlawfully discriminate in the provision of services because of race, color, creed, national origin, ancestry, sex, age, sexual preference, HIV status, or physical or mental disability. CONTRACTOR shall make its program accessible to persons with disabilities. CONTRACTOR shall operate in accordance with State and federal law and in accordance with Title VI of the Civil Rights Act of 1964 [42 USC 2000(d)]; Age Discrimination Act of 1975 (42 USC 6101); Rehabilitation Act of 1973 (29 USC 794); Education Amendments of 1972 (20 USC 1681); Americans with Disabilities Act of 1990 (42 USC 12132); Title 45, Code of Federal Regulations, Part 84; provisions of the Fair Employment and Housing Act (Government Code Section 129000 et seq.); and regulations promulgated thereunder (Title 2, CCR, Section 7285.0 et seq.); Title 2, Division 2, Article 9.5 of the California Government Code, commencing with Section 11135; and Title 9, Division 4, Chapter 6 of the California Code of Regulations, commencing with Section 10800.

6.17.2 For the purpose of this Agreement, discrimination on the basis of race, color, creed, national origin, ancestry, sex, age, sexual preference, HIV status, or physical or mental disability includes, but is not limited to, the following: denying a participant any service or access to service, or providing a benefit to a participant which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any matter related to the receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and/or treating a participant differently from others in determining whether the participant satisfied any admission, enrollment, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service or benefit.

6.17.3 Non-discrimination policies shall be in writing and available for public inspection on CONTRACTOR'S premises.

6.17.4 Complaint Process: CONTRACTOR shall furnish all clients with written notice of their right to file complaints alleging discrimination in the delivery of services. This notice shall inform clients that:

6.17.4.1 Complaints may be filed with the County Administrator or the U.S. Department of Health and Human Services, Office of Civil Rights.

6.17.4.2 In those cases where the client's complaint is filed initially with the Office of Civil Rights (Office), the Office may proceed to investigate the complaint, or the Office may request that the County Administrator conduct the investigation.

6.17.4.3 Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged discrimination and, if not satisfied with the decision, may file an appeal with the Office.

6.17.5 Accessibility: If the CONTRACTOR employs more than 15 staff members, it must:

6.17.5.1 Maintain an internal complaint resolution procedure that includes due process standards and provides for the prompt and equitable resolution of complaints alleging any action or omission that transgresses federal or state accessibility laws or regulations.

6.17.5.2 Designate at least one employee as the person responsible for: 1) implementing an internal accessibility program to ensure persons with disabilities have access to the CONTRACTOR'S facility; and 2) receiving and resolving complaints that allege violation of federal or state accessibility laws or regulations.

6.17.6 Retaliation: Neither CONTRACTOR, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or State laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or State law.

#### **Article 6.18 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 6.19 Taxpayer Identification / Form W9**

All individuals/sole proprietors, corporations, partnerships, associations, organizations or public entities providing services to the COUNTY shall provide a fully executed Department of the Treasury Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification".

#### **Article 6.20 Third Party Benefits**

Neither party hereto intends that this Agreement shall create rights hereunder in third parties including but not limited to any subcontractors or any clients provided services hereunder.

**Article 6.21 Waiver of Default or Breach**

Waiver of any default by CONTRACTOR shall not be considered a waiver of any subsequent default. Waiver of any breach by CONTRACTOR of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver of any default or any breach by CONTRACTOR shall not be considered a modification of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representative to execute this Agreement the day and year first below written.

**COUNTY OF EL DORADO**

By: Charlie Paine  
Charlie Paine, Chairman  
El Dorado County Board of Supervisors

Date: 6/28/05

**ATTEST:**  
Cindy Keck, Clerk

By: [Signature] Date: 6/28/05  
Deputy Clerk

**NEW MORNING YOUTH & FAMILY SERVICES, INC.**

By: [Signature]  
David Ashby, Executive Director  
New Morning Youth & Family Services, Inc.  
A California 501(c)(3) corporation

Date: 6/8/05

## Exhibit A

# HIPAA Business Associate Agreement

This HIPAA 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 entered into the Underlying Agreement pursuant to which Contractor 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 made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 (“HIPAA”), more specifically the regulations found at Title 45, CFR, Parts 160 - 164 (the “Privacy and Security Rule”), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and

WHEREAS, Contractor, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; 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); and

WHEREAS, the parties agree that any disclosure or use of PHI or EPHI be in compliance with the Privacy and Security Rule or other applicable law;

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 Contractor of County Disclosed PHI
  - A. Contractor shall be permitted to use PHI disclosed to it by the County:
    - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County
    - (2) as necessary to perform any and all of its obligations under the Underlying Agreement.
  - 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, Contractor 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

Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:

- (a) The disclosure is Required by Law; or
  - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
    - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
    - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (3) 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.
- (4) not disclose PHI disclosed to Contractor 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.
- (5) de-identify any and all PHI of County received by Contractor 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. Contractor 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 Contractor. In connection with its use of PHI disclosed by County to Contractor, Contractor agrees to:
- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
  - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
  - C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Business Associate Agreement.
  - D. Report to County any use or disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware.
  - E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Business Associate Agreement.

- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.
- G. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the County and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
- H. Contractor will report any security incident of which it becomes aware to the County. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or "pings".
- I. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
- J. May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).

4. PHI Access, Amendment and Disclosure Accounting. Contractor 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.
- B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
  - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
  - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, 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.
  - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
- F. Within sixty (60) days of receiving a written request from County,

incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.

- G. Not make any disclosure of PHI that County would be prohibited from making.

5. Obligations of County.

- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will make its best efforts to promptly notify Contractor 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 Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it make it's best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI.
- D. County shall not request Contractor 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 Contractor 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 Contractor, or created or received by Contractor 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 Contractor, the County shall either:
  - (1) Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County.
  - (2) Immediately terminate this Agreement if the Contractor 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 Contractor shall return or destroy all PHI received from the County, created or received by the Contractor on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Contractor. Contractor shall retain no copies of the PHI.
- (2) In the event that the Contractor determines that returning or destroying the PHI is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such PHI.

7. HIPAA Business Associate Indemnity

Contractor 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 from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to 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 arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Business Associate Agreement. Contractor 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 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 in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their 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 Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor 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 Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be

satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

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 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

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.