

## AGREEMENT FOR SERVICES 464-S1411

### Emergency Shelter Care and/or Foster Care Placement Services

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**THIS AGREEMENT** made and entered into by and between County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Oakendell, a California Corporation, duly qualified to conduct business in the State of California, doing business as Oakendell Residential Treatment Facility, whose principal place of business is 3585 Hawver Ranch Road (Mailing: P.O. Box 1144) San Andreas, CA 95249, and whose Agent for Service of Process is Steve Mertens, 1360 Oak Park Drive, San Andreas, CA 95249; (hereinafter referred to as "Contractor");

### RECITALS

**WHEREAS**, County desires and has the duty to provide protection in the form of emergency shelter care and/or foster care placement for certain children who have been taken into protective custody by County's Health and Human Services Agency ("HHSA") or who are adjudicated dependents or wards of the court (collectively hereinafter referred to as "Client," "child," or "children") and whom County takes or accepts into its charge to ensure their safety and well-being pursuant to the provisions of the California Welfare and Institutions Code ("WIC") Section 305, 625, 626(b) and 16500 et seq.; and

**WHEREAS**, Part E of Title IV of the Social Security Act provides Federal funds and California State law (WIC Section 11450) provides State funds for County administered Aid to Families with Dependent Children-Foster Care ("AFDC-FC") program in payment for certain children to live in specified licensed Foster Family Homes or Group Homes (collectively hereinafter referred to as "Facility"), and all references to "State" in this Agreement shall mean the State of California unless otherwise specified; and

**WHEREAS**, pursuant to the provisions of WIC Section 11460, the California Department of Social Services ("CDSS") is designated to administer a State system that establishes and periodically adjusts program rates for the Aid to Families with Dependent Children-Foster Care program; and

**WHEREAS**, Eligibility and Assistance Standards Sections 45-202.612 and 45-203.512 specify that responsibility for placement and care of children in foster care can be vested with County probation departments provided there is in effect a written signed agreement with the County welfare department; and

**WHEREAS**, County's Health and Human Services Agency and Probation Department have in effect a signed agreement specifying that responsibility for placement and care of children in foster care can be vested with County's probation department; and

**WHEREAS**, existing County facilities do not have the capacity or the specialized programs to provide the necessary care and protection for children in its charge; and

**WHEREAS**, County finds it impractical to develop and maintain facilities to care for the children in its charge; and

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

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws, and California law shall govern this Agreement; and

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

**NOW THEREFORE**, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto do agree as follows:

#### **ARTICLE I**

**Scope of Services:** Contractor agrees to furnish the personnel and equipment necessary to provide for the care and supervision of Client pursuant to the provisions of WIC Sections 11452 and 11460 et seq. and shall have appropriate resources available to cover the needs of Client. Contractor shall provide services in accordance with the California Manual of Policies and Procedures Division 31 Child Welfare Services Program and California Code of Regulations ("CCR") Title 22 regulations. Contractor's facility must meet all applicable licensing standards. Contractor's services shall include but not be limited to:

- A. Furnish Client with room and board, care and supervision, clothing, personal incidentals, recreation, transportation, education, social services, nurturing, care, therapeutic counseling services, medical and/or psychological treatment, supervised visitations, trainings, etc. in order to comply with court ordered services, or as suited to meet Client needs, or as determined by Client Caseworker to be suited to meet Client's needs. Donated clothing may supplement but not supplant any clothing allowance provided by the State or County.

- B. Comply with the Civil Rights Act of 1964, Section 504, Rehabilitation Act of 1973 and the Americans with Disabilities Act (“ADA”) of 1990, concerning discrimination based on Client’s actual or perceived race, ethnic group identification, ancestry, national origin, gender, age, color, religion, sexual orientation, gender identity, mental or physical disability, or infectious disease status.
- C. Abide by all Federal, State, and County laws pertaining to confidentiality.
- D. Follow State requirements related to medical screening, physical examination, medical testing, and immunization.
- E. Develop an understanding of the responsibilities, objectives, and requirements of County concerning the care of Client and work with County with regard to Client’s case plan objectives.
- F. Adhere to the case plan objectives included in all treatment plans created by County, which reflect the service objectives of the placing authority.
- G. Encourage the maintenance of the natural parent-child relationship, and, whenever possible, include Client’s parents in the treatment plans.
- H. Work toward termination of placement, on a planned basis, with maximum involvement of Contractor’s staff, Client, parents, and County.
- I. Never use corporal punishment, deprivation of meals, deprivation of monetary allowance, threat of cancellation of visits from parents, threat of cancellation of home visits, threat of removal, or any type of degrading or humiliating punishment as a means of discipline. Any form of discipline that violates Client's personal or civil rights shall also be strictly prohibited. Any such forms of discipline shall not be tolerated. In all instances and without exception the use of constructive, alternative methods to destructive discipline shall be used.
- J. Participate in all multidisciplinary team meetings (“MDT”) as requested by Client’s Health and Human Services Agency Social Worker(s) or Probation Department Deputy Probation Officer(s) caseworker (collectively hereinafter referred to as “Caseworker” or “Client Caseworker”).
- K. Conduct staff review meetings, minimally at quarterly intervals, to discuss:
  - 1. Current status of Client’s physical and psychological health; and
  - 2. Reassessment of Client’s adjustment to the home, program, peers, school, and staff; and
  - 3. Progress toward short-term objectives and long-range goals, including tasks which have been performed to reach these objectives and goals; and
  - 4. Reassessment of unmet needs and efforts made to meet these needs; and
  - 5. Modification of treatment plans as a result of MDT case consultation, modified treatment plan and/or updated case plan in regard to tasks to be performed; and
  - 6. Involvement of Client and their parent(s) in treatment programs.
- L. Submit an initial diagnostic summary on Client to County no later than one (1) calendar month after Client’s initial placement. Summary shall include but not be limited to:
  - 1. Medical and dental needs; and
  - 2. Psychological/psychiatric evaluations obtained; and
  - 3. Staffing review summaries; and
  - 4. Educational assessment; and
  - 5. Peer adjustment; and
  - 6. Relationship to staff; and
  - 7. Involvement in recreation program; and
  - 8. Behavioral problems; and

9. Short-term treatment objectives (i.e., goals established for the next three [3] months); and
  10. Long-range goals; and
  11. Tasks planned to reach objectives and goals and the staff assigned to perform those tasks; and
  12. Identification of unmet needs; and
  13. Involvement of Client and their parents in the treatment program.
- M. Maintain medical, dental, and educational records for each Client in a secure and confidential area and regularly supply updated information to County.
  - N. Not make any independent agreements with Client's parents, siblings, or guardians.
  - O. Not release Client to anyone without prior written authorization from County.
  - P. Allow representatives of County to visit Client at Contractor's facility at any time.
  - Q. Submit on-going written evaluations to County on a quarterly basis, effective the date Client is initially placed. These evaluations shall include, but not be limited to:
    1. Current status of Client's physical and psychological health; and
    2. Reassessment of Client's adjustment to the home, program, peers, school, and staff; and
    3. Progress toward short-term objectives and long-range goals, including tasks which have been performed to reach these objectives and goals; and
    4. Reassessment of unmet needs and efforts made to meet these needs; and
    5. Modification of treatment plans as a result of Multidisciplinary Team ("MDT") case consultation, modified treatment plan and/or updated case plan in regard to tasks to be performed; and
    6. Involvement of Client and their parent(s) in treatment programs.
  - R. Immediately notify Client Caseworker or Caseworker's Supervisor by telephone of any significant changes in Client's health, behavior, or location, and provide a follow-up written incident report within twenty-four (24) hours. For after-hour notification, contact on-duty Caseworker.
  - S. Submit copies of any pertinent information, such as school reports, medical reports, and psychological/psychiatric reports in a timely manner to Caseworker as completed and as part of the quarterly report.
  - T. Provide County with at least seven (7) calendar days prior notice of intent to discharge Client, unless it is agreed upon in writing by County that less notice is required.
  - U. Not move Client to another facility within the facility's organization or to another facility entirely without the specific written consent of Client Caseworker. If Client is moved without specific written authorization from Client Caseworker, significant delays in funding shall occur resulting in a delay of payment to Contractor and, in certain instances, Federal Title IV-E eligibility may also be denied, further delaying payments to Contractor.
  - V. Provide covered services to Client referred by County in the same manner in which it provides said services to all other individuals receiving similar services from Contractor subject to any limitations contained in Client's treatment plans.
  - W. Immediately notify County if an application is made on behalf of Client for any kind of income. Examples include, but are not limited to child support payments; Veteran's Benefits; Railroad Retirement; Social Security; Retirement, Survivors, Health and Disability Insurance ("RSHDI"); earned income; and Supplemental Security Income/State Supplemental Program ("SSI/SSP").

- X. Remit to County any income received on behalf of Client while in foster care up to the full cost of board and care plus medical cost(s). In addition, cooperate with County and the Social Security Administration, or other appropriate agency, to render County the payee for any funds received on behalf of Client.
- Y. Adhere to all current licensing requirements, regulations, requirements, and directives pertinent and legally required for Contractor to practice its profession. Contractor shall, at its sole expense, keep in effect during the term of this Agreement all required documents, licenses and certifications, including insurance certifications, and shall promptly provide County with copies of all renewals. If any of Contractor's licenses or certifications, including insurance certifications, is revoked, this Agreement shall, at County's option and without notice, be automatically terminated effective as of the date such license or certification is revoked.
- Z. Certify that the following processes are in place:
  - 1. Written policies, procedures, and standards of conduct which articulate Contractor's commitment to comply with all applicable Federal and California State standards; and
  - 2. The designation of a compliance officer and a compliance committee that are accountable to senior management; and
  - 3. Effective training and education for the compliance officer and the organization's employees and duly licensed certified substitute care providers; and
  - 4. Enforcement of standards through well-publicized disciplinary guidelines; and
  - 5. Provisions for internal monitoring and auditing; and
  - 6. Retention of such records as is necessary for audit purposes by State and Federal personnel. The records shall document the type of care and the term during which care is provided for each Client. In addition, medical, dental, educational, and progress summary records shall be confidentially maintained for each Client in accordance with the appropriate legal requirements; and
  - 7. Provision for prompt response to detected and/or reported offenses; and
  - 8. Development of corrective action initiatives relating to the provision of foster care services.
- AA. Recognize that, while County may place children in Contractor's facility, County is under no obligation whatsoever to place any child in Contractor's facility.
- BB. Arrange for the collection and storage of Client's personal belongings at termination of placement. When Client is discharged, Contractor shall ensure that Client's clothing and personal belongings accompany Client to the next placement. If Client runs away and after Contractor has immediately notified Client Caseworker of the Client run away situation, Contractor shall gather together Client's personal belongings, alert Client Caseworker that such belongings are at Contractor's facility and, if County does not immediately collect the belongings, shall store them at no charge to County for up to fourteen (14) days from the date of notification to County of Contractor's possession of Client's personal belongings. After 14 days, Contractor shall contact and inform County that the belongings shall be mailed to County at County's expense unless an alternate plan is mutually agreed upon.
- CC. Any violation of this Agreement may result in a formal complaint being filed with the Community Care Licensing Division of the California Department of Social Services ("CCL").

**County shall:**

- A. Share all available information about Client, including relevant social, medical, and educational history, behavior problems, court involvement, parental, sibling and family member(s) or family member(s) or relative visitation plans, and other specific characteristics of Client with Contractor before placement, and shall share additional information when obtained.
- B. Inform Contractor of expectations regarding the care of Client, such as meeting medical needs and special needs including but not limited to psychological needs, separation/loss issues, etc.
- C. Inform Contractor if Client has any propensities dangerous to self or others.
- D. Provide Medi-Cal cards or proof of other medical coverage for Client at the time of placement or as soon thereafter as possible.
- E. Provide Contractor with written general medical consent authorization for medical treatment.
- F. Provide clothing allowance for Client as permitted by current State regulations to meet initial clothing needs.
- G. Work with Contractor toward development of a treatment plan for Client.
- H. Contact Client at least once a month. If the case plan indicates less frequent contact, Contractor shall be so informed.
- I. Provide assistance with emergencies as they pertain to Client.
- J. Assist in the maintenance of Client's constructive relationships with parents and other family member(s), or family member(s), or relatives and involve parents in future planning for Client.
- K. Work with Contractor toward termination of Client's placement with Contractor.

**Contractor shall submit written reports within the time limits detailed above to the appropriate Client Caseworker at the address below:**

<i>Placerville Caseworker</i>	<i>South Lake Tahoe Caseworker</i>	<i>Probation Caseworker</i>
County of El Dorado, Health & Human Services Agency Attn: Child Protective Services 3057 Briw Rd. #A Placerville, CA 95667 530/642-7100 (ph) 530/626-7427 (fax)	County of El Dorado, Health & Human Services Agency Attn: Child Protective Services 3368 Lake Tahoe Blvd., #100 South Lake Tahoe, CA 96150 530/573-3201 (ph) 530/541-2803 (fax)	County of El Dorado Probation Department 3974 Durock Road, Suite 205 Shingle Springs, CA 95682 530/621-5625 (ph) 530/676-6216 (fax)

**ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties and remain in effect unless terminated by either party pursuant to the Articles entitled "Default, Termination and Cancellation" and/or "Fiscal Considerations" of this Agreement.

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### **ARTICLE III**

#### **Compensation for Services:**

Reports detailed herein are considered a required deliverable. Services shall be considered incomplete until such date as said reports are received and approved in writing. All required written authorizations for services and subsequent approvals of reports shall be attached to all invoices. Compensation for services shall not be provided for incomplete services.

For each Client placed with Contractor, County shall pay Contractor with AFDC-FC funds at the current applicable monthly Group Home rate established by the California Department of Social Services Foster Care Funding and Rates Bureau ("FCFRB"). If Contractor is vendored by a Regional Center, County shall pay at their current applicable rate as established and authorized by the California Department of Developmental Services ("CDDS").

County and Contractor agree that payments referenced in this Agreement shall be based upon the current applicable monthly rates as established by the FCFRB or, when appropriate, as established by the CDDS for Regional Center vendored facilities and transmitted to CDSS. County shall compensate Contractor for the services authorized by County for each Client, as set forth in this Agreement and at Contractor's current California-approved Licensing Rate Classification Level ("RCL"), which varies based on the licensing classification of Contractor and the age of Client at the time services are rendered. These rates are published by CDSS and transmitted to County and Contractor via a CDSS All County Letter whenever there is a change in the rates. For services provided hereunder, County shall calculate payment for services rendered and shall issue payments, including prorated payments, at a rate based on the length of Client's stay at facility and the classification and level of services authorized and provided. County agrees to pay Contractor monthly in arrears for services authorized by County and rendered by Contractor. More specifically:

- A. For Foster Care Placement services, County shall transmit said payment in the form of a check within fifteen (15) days following the end of the month in which services were provided.
- B. For Emergency Shelter Care services, County shall transmit said payment in the form of a check within thirty (30) days following the end of the month or following the last date said services were provided.
- C. Unique or specialized services obtained on behalf of Client shall require written authorization from Client Caseworker and Caseworker's supervisor prior to the procurement for said service(s). Payment for any unique specialized service(s) shall be made in the form a check within forty-five (45) days of receipt of a detailed invoice accompanied by a copy of the purchase receipt or invoice and the written authorization from County.

The categories of rates that are established by CDSS or CDDS and that may, based on Contractor's agency classification and/or RCL, be applicable for reimbursement under this Agreement are:

Adoption Assistance Program: WIC Sections 16115, 16118, 16119 and 16120 et seq. establishes the criteria necessary for determining a child's Adoption Assistance Program eligibility status and for the provision of financial aid. It directs County to directly reimburse eligible individuals for reasonable nonrecurring expenses as defined by CDSS that are incurred as a result of the adoption of a Client eligible for the Adoption Assistance Program and instructs County to seek reimbursement for said costs from State.

Annual and Initial Clothing Allowance: WIC Sections 11460 and 11461 et seq. and the California 2001-02 Budget Act defines annual and initial clothing allowances as the amount paid by each county with State participation in addition to the AFDC-FC basic rate for the provision of clothing for an AFDC-FC child. This includes an initial supply of clothing, school or other uniforms, and disposable diapers for infants and for children who use disposable diapers as undergarments. The State supplemental clothing allowance does not supplant the regular County clothing allowance. Donated clothing may supplement but not supplant any clothing allowance provided by the State or County.

Foster Family Agency (“FFA”) Treatment and Nontreatment Program Rates: There are two types of FFA programs: "Treatment foster care or therapeutic foster care," and "nontreatment foster care." The California Department of Social Services has statutory responsibility for developing, implementing, and maintaining a rate setting system for FFAs receiving AFDC-FC funds. The FFA treatment rates are established by using the basic rate for the FFH plus a set increment for the special needs of the child, a maximum amount for social work activities, and a percentage for administration, recruitment, and training. The FFA nontreatment rates are established by using only the basic rate of the FFH and a specialized care rate when appropriate.

Foster Family Homes (“FFH”): Foster Family Homes, as defined in California’s Department of Social Services Community Care Licensing regulations, provide 24-hour care and supervision in a licensee's family residence for no more than six (6) children. Care is provided to children who are mentally disabled, developmentally disabled, or physically handicapped, children who have been removed from their home because of neglect or abuse, children who require special health care needs and supervision because of such disabilities, or children who are adjudicated wards of the court.

Group Home (“GH”): Group Home, as defined in CCL regulations, refers to a residential facility of any capacity that provides 24-hour non-medical care and supervision to children in a structured environment with the services provided at least in part by staff employed by the licensee. It does not include health facilities and clinics, County-operated juvenile halls, homeless shelters, or residential schools whose only function is education. Although a GH may be licensed to care for fewer than six (6) children, the vast majority of GH are licensed to care for six (6) or more children.

Infant Supplement: California Senate Bill 510 (Chapter 1066, Statutes of 1988) implements the Omnibus Budget Reconciliation Act (“OBRA”) of 1987, which amended sections of the Social Security Act, which requires the aid payment for a minor parent who receives AFDC-FC to also include an amount for the care of the minor parent’s child living with the parent in placement. CDSS Operations Manual, Division 11, Section 11-415.1 addresses the administrative standards for eligibility and assistance programs regulations for AFDC-FC program rates and states, “The infant supplement paid shall be a uniform amount to cover the cost of care and supervision of a child in addition to the rate that would otherwise be paid for the minor parent's placement.” Authorities cited are WIC Section 10553 and Section 10554. Reference: Sections 11465 and 11468, WIC. Children who are in receipt of Kinship Guardian Assistant Payments Program (“Kin-Gap”) benefits are also entitled to receive the infant supplement.



Intensive Treatment Foster Care Programs: WIC Section 18358 et seq. sets the requirements for implementing the Intensive Treatment Foster Care Program (“ITFC”). Rates for Foster Family Agency programs participating under this Section shall be exempt from the current AFDC-FC Foster Family Agency rate-setting system. Rates for Foster Family Agency programs participating under this Section shall be set according to the appropriate service and rate level based on the level of services provided to the eligible child and the certified foster family. For an eligible child placed from a GH program, the service and rate level shall not exceed the rate paid for GH placement. For an eligible child assessed by the County interagency review team as at imminent risk of GH placement or psychiatric hospitalization, the appropriate service and rate level for the child shall be determined by the interagency review team at time of placement.

Kinship Guardianship Assistance Payments Program: The Kinship Guardianship Assistance Payment Program was established by California Senate Bill 1901 (Chapter 1055, Statutes of 1998) to provide services to all children exiting the juvenile court dependency system on or after January 1, 2000 to live with a family member(s), relative legal guardian, or non-related extended family member. A delinquent ward may also be placed with a family member(s), relative legal guardian, or non-related extended family member. WIC Section 11364 et seq. establishes that Kin-GAP Program rates are to be paid on behalf of eligible children at an amount equal to one hundred percent (100%) of the basic rate paid to a licensed or approved FFH. Children who are in receipt of Kin-GAP benefits are also entitled to receive the infant supplement (see “Infant Supplement,” below).

Special Care Increments: WIC Section 11461(e) (1) defines "specialized care increment" as an AFDC-FC approved amount paid with State participation on behalf of an AFDC-FC Client requiring specialized care, to licensed or approved family home facility with a capacity of six (6) or less, or in an approved home of a family member(s) or relative, or non-related legal guardian, in addition to the basic rate.

Contractor and its duly licensed certified substitute care providers shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. All substitute care providers shall be appropriately cleared by the Department of Justice (“DOJ”) to perform substitute care services pursuant to the Article titled “Fingerprinting,” and shall be licensed and certified as required by the State. Assumption or takeover of any of Contractor’s duties, responsibilities, obligations, or performance of same by any entity other than Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with County’s express prior written approval.

Contractor and its duly licensed certified substitute care providers shall have no claim whatsoever against County for payment of any money or reimbursement of any kind for any service(s) provided by Contractor or its duly licensed certified substitute care providers following the termination of this Agreement. Contractor shall not charge any Client or their family or guardian, or receive any fee or payment from any Client or their family or guardian, for services rendered pursuant to this Agreement. Contractor shall not charge or receive fees or

payments from any Client or their family or guardian for children referred to Contractor pursuant to this Agreement who are not actually placed in facility. Should Contractor receive any such payment, Contractor shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after termination of this Agreement or any overpayments made in error shall not constitute a waiver of County's right to recover such payment from Contractor.

Any payment made in error shall be returned to County within forty-five (45) days of receipt of said payment either by returning the check sent in error or by issuance of a new check made payable to County. This provision shall survive the termination of this Agreement. Notwithstanding the foregoing, if County does not remove Client from Contractor's GH facility following termination of this Agreement, County shall continue to pay based upon the GH's RCL rate. If County does not remove Client from Contractor's Certified Family Home following termination of this Agreement, County shall continue to pay for Client's residence based upon the current applicable monthly facility rate(s) established by the CDSS, Foster Care Funding and Rates Bureau.

Contractor shall maintain a Foster Care Funding and Rates Bureau facility rate(s) or, for a Contractor vendored by a Regional Center, authorization for payment of the Regional Center rate with AFDC-FC funds throughout the term of the Agreement.

Expenditures made by Contractor during the provision of services under this Agreement shall be in compliance and in conformity with the United States Office of Management and Budget ("OMB") Circular, A-122. Contractor is responsible for obtaining the most recent version of this Circular which is available online at <http://www.whitehouse.gov/omb/circulars/index.html>.

Charges for placements lasting less than a full month shall be prorated. Payment for placements shall commence the day Client is placed with Contractor and terminate the day before Client is removed. When Contractor agrees to hold a bed open for Client, Contractor shall document County's agreement to pay for the open bed in Client's record and shall request from County a written confirmation via fax of said requested open bed hold. County shall not pay for an open bed for a period in excess of seven (7) days.

Should Contractor, after having Client admitted to a psychiatric facility, unilaterally decide not to take Client back, all payments made to Contractor to keep the space available for that Client shall be returned immediately to County by Contractor, unless otherwise agreed to by County and Contractor in writing.

Emergency Shelter Care Rates: The term "emergency shelter care" refers to placements made with little or no advance notice pending court-ordered placement of Client. Emergency shelter care rates shall be pro-rated based on the current applicable monthly facility rate(s) established by CDSS, Foster Care Funding and Rates Bureau.

Reimbursement for Unique, Specialized Purchases: Purchases necessary to meet unique, specialized requirements that are specific to an individual Client and are critical to their safety and/or well-being shall be reviewed and authorized on a case-by-case basis by the County as follows:

- A. For Clients who are a dependent of the court, all such unique, specialized purchases must be specifically pre-approved in writing by County of El Dorado’s HHSA Director, Assistant Chief Director, Chief Fiscal Officer, or Child Protective Services Program Manager.
- B. For Clients who are a ward of the court, all such unique, specialized purchases must be specifically pre-approved in writing by the El Dorado County Probation Department’s Chief Probation Officer or Supervising Deputy Probation Officer.

Under no circumstances shall County reimburse Contractor or their duly licensed certified substitute care provider for any provisions, supplies, or other items that have not been pre-approved in writing. Contractor shall submit within thirty (30 days) following the month in which purchase was made, a detailed invoice accompanied by a copy of the purchase receipt(s) and the written authorization from the appropriate County department, i.e., HHSA, for Clients who are dependent children of the court or Probation Department for Clients who are wards of the court.

Any correspondence or inquiries relative to payments under this Agreement shall be in writing and shall be addressed to:

<i>West Slope and All Other Non-East Slope Contractors</i>	<i>East Slope Contractors</i>
County of El Dorado Health & Human Services Agency Attn: Accounting Unit 3057 Briw Road Placerville, CA 95667	County of El Dorado Health & Human Services Agency Attn: Child Protective Services 3368 Lake Tahoe Blvd., #100 South Lake Tahoe, CA 96150

For services provided herein, County agrees to pay Contractor monthly in arrears and within forty-five (45) days following the County’s receipt and approval of itemized invoice(s) identifying services rendered.

**ARTICLE IV**

**Maximum Obligation:** The maximum compensation payable under this Agreement shall not exceed \$400,000 during any fiscal year, which shall be defined as the period commencing July 1 of each calendar year and ending June 30 of the following calendar year.

**ARTICLE V**

**Foster Youth Personal Rights:** Contractor shall ensure that the personal rights of Client comply with WIC Section 16001.9, which articulates the rights of all children in foster care. Any restrictions on the rights of any Client must be pre-approved in writing by Client Caseworker on a case-by-case basis as specified in the Article titled “Scope of Services.” Client rights also include but are not limited to:

- A. Client has the right to fair and equal access, including transportation, to all available services, placement, care, treatment, and benefits.
- B. Client has the right to not be subjected to discrimination or harassment on the basis of Client’s actual or perceived race, ethnic group identification, ancestry, national origin,

- gender, color, religion, sexual orientation, gender identity, mental or physical disability, or infectious disease status.
- C. Client has the right to be treated with respect:
1. The facility shall ensure that Client and their authorized representative(s) are offered the opportunity to participate in the development of Client's case plan.
  2. The facility shall ensure that privacy rights of Client are respected. Individual privacy shall be provided at all times in Client's room and all toilet, bath, shower, and dressing areas.
  3. Client access to bathrooms shall not be unreasonably limited during waking or sleeping hours.
  4. Staff shall treat Client with respect and shall be prohibited from inflicting physical, sexual, emotional, or other abuse, or corporal punishment on Client including but not limited to humiliating, intimidating, ridiculing, coercing, or threatening Client.
  5. Client has the right to be free to attend religious services and activities of their choice and to have visits from the spiritual advisor of their choice. Client attendance at any religious services, in or out of the facility, shall be on a completely voluntary basis.
  6. Client has the right to have visitors visit privately during waking hours without prior notice, provided that such visitations are not prohibited by Client's case plan, do not infringe upon the rights of other Clients, do not disrupt planned activities and are not prohibited by court order or by Client's authorized representative(s).
  7. Client shall have fair and equal access to all available services, placement, care, treatment, and benefits; and the right to referral, as appropriate, to other service providers.
- D. Client has the right to live in a safe, healthy, and comfortable facility where he or she is treated with respect:
1. Client has the right to privacy in their own room(s) and shall not be prohibited from closing their room(s) absent specific concerns for the safety of Client.
  2. Client shall have individual storage space made available for private use.
  3. Client shall be provided with personal hygiene products unless the request is considered unreasonable, as determined by the CCL or Client's Caseworker.
  4. Client shall be allowed to possess and use their own personal items including but not limited to toilet and personal hygiene articles unless said items are prohibited as part of a discipline program.
  5. Client has the right to be free from unreasonable searches of personal belongings.
  6. Client shall be provided with an adequate amount of nutritious food, including between meal nourishment and snacks.
  7. Clients who require special diets including but not limited to vegetarian diets, religious diets, or diets based on health needs shall be provided with an adequate amount of nutritious food, including between meal nourishment and snacks, appropriate to their special dietary requirements.
  8. Client shall not be required to perform chores which are beyond the scope of expectations as outlined in the house rules or discipline information reviewed at placement by Client Caseworker and Client except on a voluntary basis and for compensation.
- E. Client has the right to have fair and equal access, including transportation, to competent professional services including but not limited to medical, dental, and psychiatric care and the right to referral, as appropriate, to other service providers:

1. Client has to right to request and receive an individualized written treatment or service plan, competent professional services based on said plan, and periodic review and assessment of needs and revisions of plan including a description of services that may be required for follow-up.
  2. Client has the right to ongoing participation in the planning of professional services and in the development and periodic revision of the treatment or service plan, including the right to an explanation of all aspects of Client's own condition and treatment.
  3. Non-medical staff shall not be allowed to make any medical decisions about the severity of Client's illness or injury nor screen or deny Client's requests for medical attention without consultation with and approval by a licensed physician, nurse, or a trained health practitioner.
  4. Client has a right to a second opinion before being required to undergo any intrusive professional service including but not limited to medical, dental, or psychiatric procedures, provided there is a resource for payment of said second opinion such as private insurance coverage for Client, Medi-Cal authorization, etc.
  5. Psychotropic medications shall not be administered without court order and compliance shall be with court policy for administration of psychotropic medications.
  6. Client has the right to refuse their medications and shall not be evicted from the facility for doing so. However, if a doctor or judge orders that Client must take the medications, then the facility shall take the appropriate steps to ensure Client takes the medications regularly.
  7. Unless otherwise mandated by law or court order, Client has the right to refuse any services and/or treatment in accordance with State and federal law.
  8. Client has the right to services and treatment under conditions that support client's personal liberty and restrict such liberty only as necessary to comply with Client's treatment needs, including the right to freedom from restraint or seclusion.
  9. Client has the right to contact their Caseworker regarding receiving or rejecting any professional services including but not limited to medical, dental, and psychiatric care services.
  10. Facility staff shall fully respect the confidentiality of Client records including but not limited to Client's professional service treatment information.
    - a) Information about Client's professional service treatment(s) shall be kept locked in a secure area and not generally made available to staff.
    - b) No facility shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be to those officers and employees of the facility which maintains the record who have a need for the record in the performance of their duties or to Client Caseworker or County;
  11. Nothing in this section shall be interpreted to require Contractor to take any action that would impair the health and safety of any County Clients in out-of-home placement.
- F. Client has the right to fair treatment in administering rewards and punishments:
1. The facility shall develop, maintain, and implement written facility discipline policies and procedures meeting the requirements specified below:
    - a) Staff, Client, Client Caseworker, and authorized Client representative(s) shall receive copies of such policies and procedures and copies of such policies and procedures

- shall also be maintained in Client's record.
- b) Any form of discipline that violates Client's personal or civil rights shall be strictly prohibited.
  - c) New Clients should not always/automatically start on the lowest level of the incentives system.
  - d) Client's level of assignment and privileges shall be consistent with the case plan/case plan update/court order(s).
  - e) Client shall not be punished for being new and/or being moved.
  - f) Client has a right to appeal disciplinary actions that result in a loss of privileges. This appeal includes a right to notice of an alleged infraction and the intended punishment, as well as a decision by a third party, using the grievance procedure as described by the foster caregiver in the orientation to placement.
  - g) Client has a right to file a complaint with the facility or their agency representative.
- G. Client has the right to have contact with family member(s) or relatives, County Client Caseworkers, Attorneys, the Court, Court Appointed Special Advocates, the Community Care Licensing Division of the State Department of Social Services, or the State Foster Care Ombudsperson and any other designated adult supporter(s) or authorized representative(s):
- 1. Client has the right to access telephones in order to make and receive confidential calls, provided that such calls are not prohibited by Client's case plan, are not prohibited as a form of discipline, do not infringe upon the rights of other Clients, do not restrict availability of the telephone during emergencies, and are not prohibited by court order or by Client's authorized representative(s).
  - 2. Client telephone calls to Client's Caseworker, authorized representative(s), placement authority, or family member(s) or relative(s) included in the service plan shall not be prohibited as a form of discipline.
  - 3. Client has the right to send and receive unopened correspondence, including court reports, unless prohibited by court order or by Client's Caseworker or authorized representative(s).
  - 4. The facility shall promptly and completely answer communications to the facility from Client's Caseworker, family member(s) or relative(s), and/or authorized representative(s).
  - 5. Level systems shall not restrict personal rights as defined in California Code of Regulations Title 22, Section 84072. These include the right to approved visitors, telephone calls to parents or family member(s) or family member(s) or relatives included in the case plan, County Client Caseworkers, Court Appointed Special Advocates or attorneys, access to correspondence and access to medical care.
  - 6. Client has the right, upon request, to review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement; and case plan, including being told of changes to the plan.
  - 7. Client has the right to information regarding client rights, including a copy of documents in their record, in a language of their choice, to the extent possible and access to an advocate in order to understand, exercise, and protect their rights.
  - 8. Client has the right to attend their court hearings and to speak to the judge.
  - 9. Client has the right to confidentiality of all juvenile court records consistent with existing law.
  - 10. Client has the right to assert complaints to Contractor with respect to infringement of

their rights, including the right to have such complaints considered in a fair, timely, and impartial procedure and to be free from threats or punishment for making said complaints.

11. Client has the right to contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making said complaints.
- H. Client has the right to education and community involvement:
1. Client has the right to attend public school and to participate in extracurricular, cultural, and personal enrichment activities including but not limited to church and community activities consistent with the child's age and developmental level unless otherwise specified in their case plan.
  2. Client has the right to participate in extracurricular activities in accordance with the case plan. The facility shall provide assistance with enrollment and transportation as necessary for Client to participate in these activities to the extent possible and agreed upon by Client Caseworker.
  3. At 16 years of age or older, Client shall have access to existing information regarding the educational options available including, but not limited to, the coursework necessary for vocational and postsecondary educational programs and information regarding financial aid for postsecondary education.
    - a) The State Department of Social Services and each county welfare department is encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (23) of subdivision (a) of WIC 16001.9.
- I. Client has the right to work and develop job skills at an age-appropriate level and consistent with State law:
1. Client has the right to participate in education and employment classes and to attend Independent Living Program classes and activities, if he or she meets age requirements. Access to these services shall not be withheld.
  2. Transportation arrangements to and from work or for the development of job skills for Clients who do not have independent arrangements shall be provided.
    - a) Facility shall support each Client who desires to obtain and maintain employment by providing transportation, assist in purchasing uniforms, and providing other forms of support to the fullest extent possible and agreed upon.
    - b) The facility shall assist each Client age 16 or over to develop vocational skills and obtain documents necessary for employment. This may also include providing assistance in job training.
- J. Client has the right to social contacts:
1. Client has the right to have social contacts with people outside of the foster care system, including but not limited to teachers, church members, spiritual advisors, mentors, and friends.
  2. Client has the right to have visitors visit privately during waking hours without prior notice, provided that such visitations are not prohibited by Client's case plan, do not infringe upon the rights of other Clients, do not disrupt planned activities and are not prohibited by court order or by Client's authorized representative(s).
- K. Client has the right to adequate clothing:

1. Clients shall receive a clothing allowance and shall possess their own clothing.
  2. Donated clothing may supplement but not supplant any clothing allowance provided by the State or County.
- L. Client has the right to a reasonable allowance:
1. Client is entitled to and shall receive a monthly allowance (22 CCR Sec. 84077(2)) and shall receive at least a portion of that allowance each month.
  2. Client allowances may not be withheld unless regulatory criteria are met. Any amount of Client allowance that is withheld as a form of discipline must meet the requirements of regulatory criteria including but not limited to WIC Section 16001.9 and shall adhere to the law (22 CCR Sec. 84026 Safeguards for Cash, Personal Property and Valuables) which defines the requirements that must be met to withhold a portion of Client's allowance, including the requirements that the fines shall be used for the benefit of the individual Client or all Clients in placement, separate accounting, etc. The circumstances under which fines are to be imposed shall be specified in writing. Allowances may not be withheld because Client is working.
  3. Client shall possess and use their own cash resources.
  4. Client is entitled to maintain an emancipation bank account and manage personal income, consistent with Client's age and developmental level, unless prohibited by Client's case plan.
  5. Client's cash resources, including allowances, shall not be used for any basic services specified in the regulations including but not limited to toilet articles or basic clothing needs.

## **ARTICLE VI**

**Mandated Reporter Requirements:** Contractor acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as The Child Abuse and Neglect Reporting Act and the Welfare and Institutions Code 15630 et seq. related to elder and dependent adults, as applicable.

## **ARTICLE VII**

**Criminal Record Clearances/Megan's Law:** The California Health and Safety Code requires a background check of all applicants, licensees, adult residents, volunteers under certain conditions, and of all employees of community care facilities who have contact with Clients. If the California Department of Social Services finds that an individual has been convicted of a crime other than a minor traffic violation, the individual cannot work or be present in any community care facility unless they receive a criminal record exemption from the Community Care Licensing Division, Caregiver Background Check Bureau ("CBCB"). Simply defined, an exemption is a Department authorized written document that "exempts" the individual from the requirement of having a criminal record clearance. CBCB also examines arrest records to determine if there is a possible danger to Clients (Health & Safety Code Sections 1522, 1568.08, 1569.17, and 1596.871).

With the implementation of Megan's Law in 1996, a convicted, registered sex offender is



classified as a “high-risk” sex offender, a “serious” sex offender, or as an “other” sex offender, as defined by California Penal Code Section 290 et seq. Sex offender registrants whose sex crime was against a victim under age 16 are prohibited by law from working, as an employee or volunteer, with minors if the registrant would be working with minors directly and in an unaccompanied setting on more than incidental or occasional basis or would have supervisory or disciplinary power over the child. If the registrant's crime was not against a victim under age 16, the registrant must notify the employer or volunteer organization of his status as a registrant. Failure to comply with this law is a misdemeanor offense (California Penal Code Section 290.95.). Additionally, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

Contractor shall remain in compliance with all laws and Community Care Licensing requirements relating to Megan’s Law while this Agreement is in effect.

#### **ARTICLE VIII**

**Fingerprinting:** Pursuant to California Penal Code Section 11105.3(a), “Notwithstanding any other law, a human resource agency or an employer may request from the DOJ records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (1) of 15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care.” Therefore, Contractor warrants that its employees, subcontractors, assignees, volunteers, and any other persons who, while providing services under this Agreement, have or may have supervisory or disciplinary power over any person or minor under his or her care, have been fingerprinted in order to determine whether they have a criminal history that would compromise the safety of persons or minors with whom they have contact in the course of provision of services under this Agreement. Contractor further warrants that said employees, subcontractors, assignees, volunteers, and other persons have been cleared by Contractor to perform the services described in this Agreement. All fingerprinting services shall be at Contractor’s sole expense. More specifically, Contractor agrees that:

- A. Each applicant for paid or volunteer employment by Contractor who shall or may have a supervisory or disciplinary power over a minor or any person under his or her care shall be fingerprinted in order to determine whether they have a criminal history, which would compromise the safety of such minor, or person(s) under his or her care. All fingerprinting shall be at Contractor’s sole expense.
- B. The fingerprinting process as set forth above shall be completed and the results of the process shall be obtained before any of the Contractor’s employees, subcontractors, assignees, or volunteers are assigned or permitted to work with any minor or person referred to Contractor by County. Alternatively, the Contractor may set a hire date prior to obtaining fingerprinting results contingent on the applicant certifying that: (1) his or her employment application truthfully and completely discloses whether he or she has ever been convicted of a felony or misdemeanor or been on parole or probation and (2) that the applicant understands that a background check shall be conducted and that he or she shall be immediately dismissed from

employment if he or she has failed to provide information regarding convictions, has provided incomplete information regarding convictions, has omitted information regarding convictions or if the fingerprinting results reveal any conviction incompatible with employment with Contractor.

- C. Contractor shall maintain, and make immediately available to County upon request, a written fingerprint certification for each employee, volunteer, or applicant for paid or volunteer employment for whom fingerprinting is required as detailed above. Such certification shall state that the individual has been fingerprinted, shall provide the date of said fingerprinting and shall state whether or not the process has disclosed any criminal history of the individual, which may compromise the safety of minors or other persons with whom that individual has contact. Fingerprint information received from Department of Justice ("DOJ") by Contractor shall be retained or disposed of pursuant to current DOJ directives.

#### **ARTICLE IX**

**Medi-Cal Screening:** If applicable, Contractor shall screen 100% of referred Clients for State Medi-Cal eligibility. The screening shall include, but not be limited, to:

- A. Verifying that the Medi-Cal beneficiary is eligible to receive Medi-Cal services at the time Client is referred for service;
- B. Verifying the County of El Dorado as the responsible County;
- C. Assessing for valid full Medi-Cal scope aid codes;
- D. Monthly verification of Client eligibility during the time that Contractor provides services to Client.

#### **ARTICLE X**

**Non-Discrimination:** Assurance of compliance with the County of El Dorado Health and Human Services Agency non-discrimination in State and Federally assisted programs requirements as follows:

Contractor hereby agrees that they shall comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended, and in particular Section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 - 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable Federal and State laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84 and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are non-discriminatory, to the effect that no person shall, because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed, or political belief, be excluded from

participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving Federal or State financial assistance; and hereby give assurance that it shall immediately take any measures necessary to effectuate this Agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal and State assistance; and Contractor hereby gives assurance that administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, shall be prohibited.

By accepting this assurance, Contractor agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of the aforementioned laws, rules, and regulations, and permit authorized CDSS or Federal government personnel, during normal working hours, to review such records, books, and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code Section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate Federal agency for further compliance action and enforcement of this assurance.

This assurance is binding on Contractor directly or through contract, license, or other provider services, as long as it receives Federal or State assistance.

County policy is intended to be consistent with the provisions of all applicable State and Federal laws.

## **ARTICLE XI**

**Confidentiality and Information Security Provisions:** Contractor shall comply with applicable Federal, State, and local laws and regulations, including but not limited to the Code of Federal Regulations (“CFR”), Title 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (“PII”).

Personally Identifiable Information means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver’s license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

### **A. Permitted Uses and Disclosures of PII by Contractor.**

1. **Permitted Uses and Disclosures.** Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Contractor’s operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the

confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, Contractor, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate Federal or State laws or regulations.

2. Specific Uses and Disclosures provisions. Except as otherwise indicated in the Agreement, Contractor shall:
  - a) Use and disclose only PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law; and
  - b) Take all reasonable steps to destroy, or arrange for the destruction of a client's records within its custody or control containing personal information that is no longer to be retained by Contractor by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

B. Responsibilities of Contractor.

1. Contractor agrees to safeguards:
  - a) To prevent use or disclosure of PII other than as provided for by this Agreement. Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time; and
  - b) Contractor shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
  - c) Contractor shall implement a system to identify appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
2. Contractor shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
  - a) Network based firewall or personal firewall; and
  - b) Continuously updated anti-virus software; and
  - c) Patch-management process including installation of all operating system/software vendor security patches.
3. Mitigation of Harmful Effects. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors.
4. Agents and Subcontractors of Contractor. The same restrictions and conditions that apply through this Agreement to Contractor, shall also apply to Contractor's subcontractors and agents.
5. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of PII or data, where the information or data are reasonably believed to have been

acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two business days of discovery, at (530) 621-5565. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.

## **ARTICLE XII**

**HIPAA Compliance:** As a condition of Contractor performing services for the County of El Dorado, Contractor agrees to fully comply with all terms and conditions of County's Business Associate Agreement, attached hereto as Exhibit A (incorporated herein and made by reference a part hereof).

## **ARTICLE XIII**

**Release of Information:** Contractor shall ensure that the County of El Dorado Health and Human Services Agency is included as a receiving party on all Release of Information forms used in the performance of services under this Agreement.

## **ARTICLE XIV**

**Catalog of Federal Domestic Assistance:** Pursuant to OMB Circular A-133, all recipients and sub-recipients of federal funds must be provided the Catalog of Federal Domestic Assistance (CFDA) number at the time the contract is awarded. The following CFDA numbers and program titles for programs administered by the County on behalf of the CDSS may apply to this contract:

CDFA Number	Program Title
93.658	Foster Care – Title IV-E
93.659	Adoption Assistance
93.558	Temporary Assistance for Needy Families (TANF)
93.667	Social Services Block Grant

## **ARTICLE XV**

**Debarment and Suspension Certification:** By signing this Agreement, the Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to 45 CFR 76 and Contractor further certifies to the best of its knowledge and belief that it and its principals or affiliates or any sub-contractor utilized under the Agreement:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- B. Have not within a three (3)-year period preceding this application/proposal/Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of

- Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the above Paragraph B;
  - D. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default;
  - E. Shall not knowingly enter in to any lower tier or subrecipient covered transaction with any person(s) who are proposed for debarment under Federal regulations (i.e., 48 CFR part 9, subpart 9.4) or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and
  - F. Shall include a clause titled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or subrecipient covered transactions in accordance with 45 C.F.R. Part 76.

If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation in writing to County.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549 (<http://www.archives.gov/federal-register/codification/executive-order/12549.html>).

If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal and State Governments, County may immediately terminate this Agreement for cause or default.

## **ARTICLE XVI**

**Accounting Systems and Financial Records:** Contractor shall be required to establish and maintain accounting systems and financial records that accurately account for and reflect all federal funds received, including all matching funds from the State, County and any other local or private organizations. Contractor's records shall reflect the expenditure and accounting of said funds in accordance with all State laws and procedures for expending and accounting for all funds and receivables, as well as meet the financial management standards in 45 CFR, Part 92 and all current revisions of OMB Circular A-122. More particularly, Contractors are responsible for complying with OMB Circular A-122 and 45 CFR Part 92, and the allowability of the costs covered therein. Contractor must obtain written approval from a member of the HHS Executive Management prior to the expenditure of any "special" or unusual costs in order to avoid possible disallowances or disputes based on any potential unreasonableness or unallowability of expenditures as detailed under the specific cost principles of OMB Circular A-122. In order to obtain the most current regulations, the user should consult not only the latest version of the CFR, but also the List of (CFR) Sections Affected ("LSA") issued in the current month. The *Federal Register* home page (<http://www.gpoaccess.gov/nara/index.html>) offers links to both the *Federal Register* and the CFR. An electronic CFR (e-CFR) is available at <http://www.gpoaccess.gov/ecfr/>. The e-CFR is an unofficial editorial compilation of CFR material and *Federal Register* amendments. It is a current, daily updated version of the CFR;

however, it is not an official legal edition of the CFR. Please note that on-line versions of the CFR may not be the most current available.

#### **ARTICLE XVII**

**Annual Audit:** Pursuant to the Single Audit Act and the Office of Management and Budget Circular A-133, any entity that receives a total of \$500,000 or more per year in federal funds for the purposes of carrying out federal programs must complete an annual audit. The funding threshold is aggregate funds from all sources. Contractor shall mail a certified copy of said completed annual audit to County's Health and Human Services Agency at the address listed in Agreement's "Notice to Parties" Article within thirty (30) days of Contractor's receipt of same. All adverse audit findings must be documented and included with completed annual audit. Certified evidence of correction(s) of adverse audit findings shall be provided to County at the HHSA address listed in Agreement's "Notice to Parties" Article.

#### **ARTICLE XVIII**

**Audit by California State Auditor:** Contractor acknowledges that contracts involving the expenditure of public funds in excess of \$10,000 are subject to examination and audit by the California State Auditor pursuant to Government Code Section 8546.7. Contractor shall provide Federal, State, or County authorities with access to any books, documents, papers, and records of Contractor, which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. In order to facilitate these potential examinations and audits, Contractor shall maintain all books, documents, papers, and records necessary to demonstrate performance under this Agreement for a period of at least three (3) years after final payment or for any longer period required by law.

#### **ARTICLE XIX**

**Access to Records:** Contractor acknowledges that contracts involving the expenditure of public funds in excess of \$10,000 are subject to examination and audit by the California State Auditor pursuant to Government Code Section 8546.7. Contractor shall provide Federal, State, or County authorities with access to any books, documents, papers, and records of Contractor, which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. In order to facilitate these potential examinations and audits, Contractor shall maintain all books, documents, papers, and records necessary to demonstrate performance under this Agreement for a period of at least three (3) years after final payment or for any longer period required by law.

#### **ARTICLE XX**

**Transfer of Records:** In the event that Contractor ceases operation, all files that are subject to audit shall be transferred to the County for proper storage of physical records and electronic data. Contractor shall notify County of impending closure as soon as such closure has been determined, and provide County with a complete list of records in its possession pertaining to County Clients

and operational costs under this Agreement. County shall promptly advise Contractor which records are to be transferred to the custody of County. Records not transferred to custody of County shall be properly destroyed by Contractor, and Contractor shall provide documentation of proper destruction of all such records to County.

#### **ARTICLE XXI**

**Compliance with All Federal, State and Local Laws and Regulations:** Contractor shall comply with all Federal, State and local laws including, but not limited to, the Americans with Disabilities Act (“ADA”) of 1990 (42USC12101 et. seq.) and California Government Code Sections 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Contractor shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Contractor from County’s Health and Human Services Agency.

Contractor shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety, and health and sanitation regulations. Such laws shall include, but not be limited to, the Copeland “Anti-Kickback” Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.

Contractor further warrants that it has all necessary licenses, permits, notices, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, the State of California, the County of El Dorado and all other appropriate governmental agencies and shall maintain these throughout the term of the Agreement.

#### **ARTICLE XXII**

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

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### **ARTICLE XXIII**

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

### **ARTICLE XXIV**

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

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

### **ARTICLE XXV**

**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 Federal, State, and County requirements, and which are necessary for the provision of services hereunder.

### **ARTICLE XXVI**

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

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

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which

services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE XXVII**

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

#### **ARTICLE XXVIII**

##### **Default, Termination, and Cancellation:**

- A. **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 with ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date on which the extension of time to cure expires. Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.
- B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event the other party ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days upon written notice by County without cause to the other party for any reason. If such prior termination is effected, County shall pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

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**ARTICLE XXIX**

**Change of Address:** In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing pursuant to the provisions contained herein this Agreement under the Article titled "Notice to Parties." Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**ARTICLE XXX**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be addressed as follows:

For general contract notices and notices pertaining to Clients who are dependent children:

COUNTY OF EL DORADO  
HEALTH AND HUMAN SERVICES AGENCY  
3057 BRIW ROAD  
PLACERVILLE, CA 95667-5321  
ATTN: CONTRACTS UNIT

Notices pertaining to Clients who are wards of the court:

COUNTY OF EL DORADO- PROBATION DEPARTMENT  
3974 DUROCK ROAD, SUITE 205  
SHINGLE SPRINGS, CA 95682  
ATTN: BRIAN J. RICHART, CHIEF PROBATION OFFICER, OR SUCCESSOR

Or to such other location as the County directs with a copy of general contract notices to:

COUNTY OF EL DORADO  
CHIEF ADMINISTRATIVE OFFICE  
PROCUREMENT AND CONTRACTS DIVISION  
360 FAIR LANE  
PLACERVILLE, CA 95667-5321  
ATTN: PURCHASING AGENT

Notices to Contractor shall be addressed as follows:

SIERRA CHILD AND FAMILY SERVICES, INC.  
P.O. BOX 1987  
DIAMOND SPRINGS, CA 95619  
ATTN: BARRY HARWELL, EXECUTIVE DIRECTOR, OR SUCCESSOR

Or to such other location as the Contractor directs.

#### **ARTICLE XXXI**

**Indemnity:** Contractor shall defend, indemnify and hold County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's 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 Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractor(s) and employee(s) or any of these, except for the sole or active negligence of County, its officers and employees, or as expressly proscribed 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 XXXII**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager ("Risk Manager") and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
  1. If Contractor has no employees, they shall not be required to obtain Worker's Compensation and Employer's Liability insurance. Should, during the term of this Agreement, Contractor hire one or more employees who will provide any services related to this Agreement, Contractor shall immediately obtain full Workers' Compensation and Employers' Liability insurance and furnish County with certificate(s) for same.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event Contractor uses motor vehicles in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the Risk Manager as evidence that the above-required insurance is being maintained.
- F. The insurance shall be issued by an insurance company acceptable to the County of El Dorado Risk Management Department ("Risk Management") or be provided through partial or total self-insurance likewise acceptable to Risk Management.

- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event 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 for breach pursuant to the provisions contained herein this Agreement under the Article titled "Default, Termination, and Cancellation."
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer shall not cancel the insured's coverage without prior written notice to County, and;
  2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an "Additional Insured Endorsement" page, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. Either:
1. Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or
  2. Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. 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.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide both insurance and evidence of insurance to County that shall cover claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of County.

### **ARTICLE XXXIII**

**Interest of Public Official:** No official or employee of the County of El Dorado 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 the County of El Dorado have any interest, direct or indirect, in this Agreement or the proceeds thereof.

### **ARTICLE XXXIV**

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

Contractor further covenants that in the performance of this Agreement Contractor shall employ no person having any such interest.

### **ARTICLE XXXV**

**Lobbying Restriction:** The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 "Disclosure of Lobbying Activities" in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **ARTICLE XXXVI**

**California Residency (Form 590):** If Contractor is a California resident, Contractor must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. Contractor shall 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 Contractor during term of the Agreement. This requirement applies to any Agreement exceeding \$1,500.00.

#### **ARTICLE XXXVII**

**Nonresident Withholding:** If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

#### **ARTICLE XXXVIII**

**Taxpayer Identification Number (Form W-9) and County Payee Data Record Form:** All independent Contractors or Corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9 with County, which certifies their Taxpayer Identification Number. All independent Contractors or Corporations providing services to County may also be required to file a County-issued "Payee Data Record" form with County.

#### **ARTICLE XXXIX**

**Taxes:** Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

#### **ARTICLE XL**

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

#### **ARTICLE XLI**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Mark Contois, Assistant Director, Human Services, or successor.

## **ARTICLE XLII**

**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 XLIII**

**Waivers:** Failure of County to enforce any provision of this Agreement shall in no event be considered a waiver of any part of such provision or any other provision contained herein. No waiver by County of any breach or default by Contractor shall operate as a waiver of any succeeding breach of the same terms in the Agreement or other default or breach of any of Contractor's obligations under the Agreement. No waiver shall have any effect unless it is specific, irrevocable, and in writing.

## **ARTICLE XLIV**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidate in any way.

## **ARTICLE XLV**

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

## **ARTICLE XLVI**

**Litigation:** County, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Contractor must provide indemnification under this Agreement. The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Contractor of its indemnification obligations.

Contractor, promptly after receiving notice thereof, shall immediately notify the County in writing of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the County or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the County and State.

## **ARTICLE XLVII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.



**ARTICLE XLVIII**

**Conflict Prevention and Resolution:** The terms of this Agreement shall control over any conflicting terms in any referenced document, except to the extent that the end result would constitute a violation of Federal or State law. In such circumstances, and only to the extent the conflict exists, this Agreement shall be considered the controlling document.

**ARTICLE XLIX**

**Entire Agreement:** This Agreement for Services 464-S1411 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.

**REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:**

By: Mark S. Contois Dated: 3/20/14  
Mark Contois, Assistant Director  
Health and Human Services Agency

By: Brian J. Richart Dated: 3/24/14  
Brian J. Richart,  
Chief Probation Officer  
Probation Department

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By: Don Ashton Dated: 3/25/14  
Don Ashton, M.P.A.,  
Director  
Health and Human Services Agency

By: Brian J. Richart Dated: 3/24/14  
Brian J. Richart  
Chief Probation Officer  
Probation Department

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Services 464-S1411 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Norma Santiago, Chair  
Board of Supervisors  
"County"



ATTEST:  
James S. Mitrisin  
Clerk of the Board of Supervisors

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

Dated: \_\_\_\_\_

-- CONTRACTOR --

OAKENDELL,  
dba OAKENDELL RESIDENTIAL TREATMENT FACILITY  
A CALIFORNIA CORPORATION

By:   
Steve Mertens  
Executive Director  
"Contractor"

Dated: 4-21-14

By:   
Carol Mertens  
Corporate Secretary

Dated: 4-21-14

sk

## **Exhibit A**

### **HIPAA Business Associate Agreement**

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

#### **RECITALS**

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

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

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

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

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

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

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

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

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

2. Scope of Use and Disclosure by BA of County Disclosed PHI
- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
  - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
    - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
    - (3) Disclose PHI as necessary for BA's operations only if:
      - (a) Prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
        - (i) To hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
        - (ii) The third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
    - (4) Aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
    - (5) Not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
    - (6) De-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
  - C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.
3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies, procedures, and documentation requirements of the HIPAA Security Rule.

- B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to County in writing of any access, use, or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
  - B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy

of the individual's authorization, or a copy of the written request for disclosure.

- (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

- D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.
- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
  - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
  - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

- C. Effect of Termination.
- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

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

- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
  - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
  9. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
  10. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
  11. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.