

ORIGINAL

AGREEMENT FOR SERVICES #527-S1311 AMENDMENT I

Therapeutic Counseling

This Amendment I to that Agreement for Services #527-S1311, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and EDCA Lifeskills, a California Corporation, duly qualified to conduct business in the State of California (hereinafter referred to as "Contractor"), whose principal place of business is 893 Spring Street, Placerville, CA 95667; and whose Agent for Service of Process is David John Del Rio, 893 Spring Street, Placerville, CA 95667.

RECITALS

WHEREAS, Contractor has been engaged by County to provide therapeutic counseling services, substance abuse and treatment services, and other related services for the Health and Human Services Agency ("HSSA") in accordance with Agreement for Services #527-S1311, dated May 14, 2013; incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto have mutually agreed to amend **Article I – Scope of Services, Article III – Compensation for Services, Article IX – HIPAA Compliance, Article XIV – Access to Records, Article XXV – Notice to Parties, and Article XXXV - Administrator**; and

WHEREAS, the parties hereto have mutually agreed to add **Article XLII – Continuous Operation and Article XLIII – Taxes**; and renumber **Article XLII – Entire Agreement** to accommodate the insertion of the two aforementioned Articles.

NOW THEREFORE, the parties do hereby agree that Agreement for Services #527-S1311 shall be amended a first time as follows:

Articles I, III, IX, XIV, XXV, and XXXV are amended in their entirety to read as follows:

ARTICLE I

Scope of Services: Contractor shall provide personnel and services necessary to provide single or multiple units or sessions of therapeutic counseling, classes or other requested services (“service”) on an “as requested” basis to clients (“Client”) referred by County’s Health and Human Services Agency (“HHS”).

A. Professional License Requirements:

1. Therapeutic counseling services shall be provided by a currently Licensed Clinical Social Worker (“LCSW”) or currently licensed Marriage and Family Therapist (“MFT”) whose license has been issued and is regulated by the California Department of Consumer Affairs Board of Behavioral Sciences (“BBS”). Said license must be considered clear, i.e., license renewal fees have been paid, continuing education requirements (if applicable) have been met, and there have been no actions or revocations placed against it by the BBS.
 - a. The BBS does not have reciprocity with any other state licensing board. Therefore, any LCSW or MFT who is providing HHS approved services to a Client who is receiving services outside California must have a current, clear license issued and regulated by the appropriate certifying agency for the state in which they are practicing.
2. If any service is delegated to an intern, the intern must be pre-licensed by the appropriate certifying state agency and all service assignments must be under the direct supervision of a currently licensed Psychologist, Psychiatrist, Licensed Clinical Social Worker, or Marriage and Family Therapist as described above. No intern shall be the sole author of any written initial visit report or any other report that pertains to Client or Client’s treatment plan. All Client related documents must be reviewed, approved, and signed by said licensed Psychologist, Psychiatrist, LCSW, or MFT.

B. Services: When requested via HHS Authorization, Contractor shall provide services including but not limited to the following:

1. Court Meetings and Court Appearances – As arranged by and upon notification from the Court, or as the Court directs County, or upon subpoena, Contractor shall attend client-related Court meetings (“Court Meeting”) and Court sessions (“Court Appearances.”)
 - a. Court Meetings are mandatory case compliance meetings directed by the Court. Contractor shall be paid for their attendance at Court Meetings using the Regular Drug Medi-Cal (“DMC”) “Outpatient Drug Free (“ODF”) Individual Counseling face-to-face visit Unit of Service Rate as their hourly rate for time actually spent at the Court Meeting. Contractor is required to sign in with the Court Clerk at said meeting and, as requested by County, may be required to provide Minutes of the Court to verify further their attendance at same. Failure to sign in with the Court Clerk or provide Minutes of the Court as requested by the County may delay payment. If the Court’s Meeting is cancelled by the Court less than 24 hours in advance of its scheduled calendar time and is not rescheduled for the same month, Contractor may

invoice for the scheduled length of that month's cancelled Court Meeting, not to exceed two (2) hours.

- b. Court Appearances are mandatory court case appearances as directed by the Court. Contractor shall be paid for their attendance at Court Appearances using the Regular Drug Medi-Cal ("DMC") "Outpatient Drug Free ("ODF") Individual Counseling face-to-face visit Unit of Service Rate as their hourly rate and pro-rated for time actually spent at the Court Meeting. Contractor may not invoice County if Court Appearance is cancelled.
2. Family Therapy/Group Therapy/Individual Therapy - Upon written request via HHSA Authorization, Contractor shall provide the requested therapy.
3. Multidisciplinary Team Meeting Appearances - Upon request by County, Contractor shall attend multidisciplinary team meetings. County shall only pay Contractor for attendance at multidisciplinary team meetings when County specifically requests Contractor's attendance. The definition of multidisciplinary team meetings as it applies to this Agreement excludes any community-based teams or organizations in which County considers Contractor or Contractor's staff or assigns to be regular standing members. Contractor shall be paid for these appearances at the DMC rate for Regular DMC individual counseling session rate for time actually spent at the meeting.

Services shall only be provided following approval via signed HHSA Authorization. Multiple units of service ("Multiple Units") shall be defined as one or more units of same or similar service(s) provided to Client(s) on a single day, as more fully defined under Article III "Compensation for Services."

Contractor shall immediately contact the appropriate staff, at no charge to County, to inform them of Client appointment no-shows, cancellations, or any other urgent concerns directly affecting Client or Client's treatment plan.

- C. Reports: Contractor shall provide written reports, including but not limited to the following:
1. Court Documents - Upon request, and within the time limit specified by County, Contractor shall provide HHSA staff with comprehensive written reports for County's use in court. Contractor shall be compensated for the report(s) at the Drug Medi-Cal ("DMC") rate for Regular DMC individual counseling session rate with a maximum limit of a two (2) session rates charged per report. The written initial visit report is specifically excluded from the court documents reimbursement rate, as this service shall be provided at no charge to County and as further defined under "Initial Visit Report."
 2. Initial Visit Report - Within thirty calendar (30) days of Client's initial visit, Contractor shall provide appropriate HHSA staff, at no charge to County, with a written initial visit report that shall detail Contractor's professional evaluation of Client's needs including the recommended type of therapy to be utilized, the recommended number/frequency of sessions and whether or not additional or different services may be required or recommended. Once recommended services have been pre-approved via an HHSA Authorization and Contractor has initiated

services, Contractor may not make any alterations without first securing a revised HHS A Authorization from the appropriate HHS A staff.

3. **Monthly Client Progress Reports** (required from vendors providing services to CPS clients and on an “as requested basis” by other HHS A programs) - Contractor shall provide appropriate HHS A staff, at no charge to County, with a brief written progress report that outlines the primary issues being addressed with each Client, their progress to date as evidenced by observable behaviors or cognitions, and ongoing treatment goals (see Exhibit “A,” marked “Monthly Client Progress Report,” incorporated herein and made by reference a part hereof) no later than (30) days after the end of each Client’s service month. A “service month” shall be defined as a calendar month during which Contractor provides Client services in accordance with “Scope of Services.” If an alternate progress report is used, all fields noted on Exhibit “A” are mandatory.

The above written reports are a required deliverable of this Agreement and Contractor’s failure to provide them to HHS A within the specified time limits described above shall be considered a breach of this Agreement. County shall not be obligated to pay for the services provided to the client until the requested written reports have been submitted. It is a further requirement of this Agreement that all written reports submitted to HHS A shall contain the report writer’s original signature. It is recommended, but not required, that all original signatures be made using blue ink. This signature shall act as an unsworn declaration that the contents of the written report(s) are accurate.

ARTICLE III

Compensation for Services: Prior to the commencement of any HHS A authorized service(s), Contractor shall determine the category that Client falls under as set forth in the chart listed below:

<i>Client Insurance Category</i>	<i>Procedures to Follow to Receive Reimbursement for Services</i>
Uninsured Clients	For Clients without health insurance coverage, Contractor shall bill County for authorized service(s) provided in accordance with the rates set forth below. Contractor shall not charge <u>any</u> amount whatsoever to Clients who do not have health insurance.
Medi-Cal Clients with no “share of costs”	Contractors who are Medi-Cal providers shall bill Medi-Cal for authorized service(s) provided. Contractor shall <u>not</u> bill Client or County for any difference between their “regular” fee and what they receive from Medi-Cal for services rendered, any co-pay(s), any deductible, or any other amount(s).
Medi-Cal Clients with “share of costs”	Contractors who are Medi-Cal providers shall bill Medi-Cal for authorized service(s) provided and shall bill County for Client’s share of costs, up to the rate amount set forth in this Agreement. Contractor shall <u>not</u> bill Client or County for any additional costs, including but not limited to the difference between their “regular” fee and what they receive from Medi-

	Cal for services rendered, any co-pay(s), any deductible(s), or any other amount(s).
Clients with private health insurance coverage	Contractor shall bill Client's private health insurance carrier as primary insurance carrier for all authorized service(s) provided. Contractor shall only bill County for any insurance-required Client co-pay or deductible amounts. Contractor shall <u>not</u> bill Client or County for any difference between their "regular" fee and what they receive from private insurance for services rendered, any co-pay(s), any deductible(s), or any other amount(s). If Client's private health insurance company does not cover the ordered service(s), Contractor shall follow the above procedures for Uninsured Clients.

After determining the proper insurance category Client falls under, and unless as otherwise defined in this Agreement, provided services shall be billed using the County standardized rate structure, which shall use the most current California Drug Medi-Cal ("DMC") Alcohol and Drug Services Program "Regular DMC" and "Perinatal DMC" rates (collectively "DMC rates") as its benchmark and as set forth in the chart listed below. Furthermore, for the purposes of this Agreement:

- A. DMC rates are for reimbursement reference purposes only and any descriptive information contained within the DMC rate schedule shall not apply to this Agreement unless otherwise specifically addressed. California-approved Drug Medi-Cal DMC rates are located on the California Department of Health Services at the following website address: <http://www.dhcs.ca.gov/formsandpubs/Pages/ADPBulletinsLtrs.aspx>.¹
- B. DMC rates shall be subject to an annual adjustment in order to match the most current State-approved DMC rate schedule. Any adjustments to the DMC rate schedule by the State shall become effective the first day of the month that follows California's announcement that its governor has signed the Budget Bill for that particular Fiscal Year, thereby enacting the California State Budget Act.²

Service	County Standardized Rate
<i>AOD Tests. Upon written request via HHSA Authorization, AOD tests include but are not limited to ETG 80 Hour Urine Test, Instant 5 Panel Urine Test, Instant Alcohol Swab, and Instant Oral Saliva Test. All tests (negative and positive) shall be sent to the lab for confirmation at no additional cost. Test results shall be received from the lab within approximately five (5) days. County shall receive</i>	<i>\$45/test. Instant Alcohol Swab test is free if done in conjunction with ETG 80 Hour Urine Test</i>

¹The California ADP Bulletin contains information on the most current DMC rates, which can be found at the CA Dept. of Health Services (<http://www.dhcs.ca.gov/formsandpubs/Pages/ADPBulletinsLtrs.aspx>). This link will open the "Alcohol and Drug Bulletins and Letters" page. Click on the link titled "Proposed Drug Medi-Cal Rates for Fiscal Year ____" (most current fiscal year) or click on the Exhibit link to open the DMC rate chart.

² The most current information on the status of the enactment of the California budget act may usually be found at the following website: <http://www.ebudget.ca.gov>

<i>written confirmation of all test results (negative and positive results).</i>	
<i>Court Appearances.</i> Upon Court subpoena and pro-rated for time actually spent at the pertinent court session. If Court Appearance is cancelled, Contractor may not invoice for the appearance.	Current Drug Medi-Cal Rate for Regular DMC Outpatient Drug Free Individual Counseling Unit of Service ("UOS") Rate
<i>Court Documents Preparation.</i> Upon written request via HHSa Authorization at a rate equivalent to the individual counseling session rate and up to a maximum limit of two (2)-session rates charged per report.	Current Drug Medi-Cal Rate for Regular DMC Outpatient Drug Free Individual Counseling UOS Rate
<i>Court Meetings.</i> Upon notification from Court or as Court directs County, and at a rate equivalent to the individual counseling session rate for the time Contractor appeared in person at Court Meeting and pro-rated for time actually spent at the pertinent court session. If Court's Meeting is cancelled by the Court less than 24 hours in advance of scheduled calendar time and is not rescheduled for the same month, Contractor may invoice for the scheduled length of cancelled Court meeting, not to exceed two (2) hours.	Current Drug Medi-Cal Rate for Regular DMC Outpatient Drug Free Individual Counseling UOS Rate
<i>ETG/UA.</i> Combination package of ETG 80 Hour Urine Test and Instant 5 Panel Urine Test. All tests (negative and positive) shall be sent to the lab for confirmation at no additional cost. Test results shall be received from the lab within approximately five (5) days. County shall receive written confirmation of all test results (negative and positive results).	\$90.00/test
<i>Family Therapy Session.</i> 90 minutes per session upon written request via HHSa Authorization and wherein one (1) or more therapists or counselors treat no more than twelve (12) family members at the same time. Multiple Units of Service shall be allowed upon approval of appropriate HHSa staff.	Current Drug Medi-Cal Rate for Regular DMC Outpatient Drug Free Group Counseling UOS Rate per each attending family member
<i>Group Counseling Session.</i> 90 minutes per session and per group therapy participant upon written request via HHSa Authorization and wherein one (1) or more therapists or counselors treat no less than three (3) and no more than twelve (12) group therapy participants at the same time. Multiple Units of Service shall be allowed upon approval of appropriate HHSa staff.	Current Drug Medi-Cal Rate for Regular DMC Outpatient Drug Free Group Counseling UOS Rate
<i>Individual Counseling Session.</i> 50-60 minutes per session and per individual upon written request via HHSa Authorization. Multiple Units of Service shall be allowed upon approval of appropriate HHSa staff.	Current Drug Medi-Cal Rate for Regular DMC Outpatient Drug Free Individual Counseling UOS Rate

<p>Initial Visit Report(s). Within thirty (30) calendar days of Client's initial visit and at no charge to County, Contractor shall provide appropriate HHSA staff with a written initial visit report that shall detail Contractor's professional evaluation of Client's needs including the recommended type of therapy to be utilized, the recommended number/frequency of sessions and whether or not additional or different services may be required or recommended. Initial Visit Report must be submitted along with the invoice.</p>	<p>No Charge</p>
<p>Monthly Client Progress Reports. No later than thirty (30) days after the end of each service month, Contractor shall provide the appropriate HHSA staff, at no charge to the County, with a brief written progress report outlining the primary issues being addressed with each Client, their progress, and ongoing treatment goals. Monthly Progress Report must be submitted along with the invoice.</p>	<p>No Charge</p>
<p>Multidisciplinary Team Meeting. Upon written request via HHSA Authorization and for time actually spent in the meeting. The definition of multidisciplinary team meetings as it applies to this Agreement excludes any community-based teams in which County considers Contractor or Contractor's staff or assigns to be regular standing members.</p>	<p>Current Drug Medi-Cal Rate for Regular DMC for Outpatient Drug Free Individual Counseling UOS Rate</p>

Travel expenses, including but not limited to travel time, meals, lodging, and mileage shall not be paid by County.

HHSA Authorizations for Service(s):

- A. Contractor shall obtain an HHSA Authorization that has been signed by the appropriate HHSA staff prior to providing any service(s) to any Client(s) detailed under "Scope of Service" or "Compensation;"
- B. Prior to providing any Client service(s) NOT detailed under "Scope of Service" or "Compensation" to Client(s), Contractor shall obtain an HHSA Authorization that has been signed by HHSA staff and the HHSA Director or a member of HHSA Executive Management Team, which shall be defined as Assistant Director or above ("HHSA Executive Management");
- C. County shall not pay for any services that have not been pre-approved by an HHSA Authorization, incomplete or unsatisfactory services, "no shows," cancellations, or telephone calls.
- D. HHSA Executive Management reserves the right to review and approve for reimbursement, on a case-by-case basis, service(s) not explicitly addressed under "Scope of Services" or "Compensation."
- E. Contractor shall not be compensated for services provided to a Client outside the authorized service dates identified on said HHSA Authorization;

- F. A copy of the HHSA Authorization shall be included with the invoice containing the service it pertains to and both documents shall be submitted to HHSA at the address indicated in the Article below titled "Compensation for Services." Failure to submit a copy of the HHSA Authorization with Contractor's invoice may result in payment being withheld until said Authorization is submitted.
- G. All required written reports must be submitted along with the invoice.

Invoices:

It is a requirement of this Agreement that Contractor shall submit an original invoice, which shall act as an unsworn declaration that its contents have been reviewed and approved by Contractor. Photocopied or faxed invoices are not acceptable. Invoices with "white-out" types of corrections will not be accepted. HHSA Authorization or other written authorizations for services shall be attached to invoices. Only the name(s) of Clients listed on the HHSA Authorization shall be listed on the invoice. Contractor shall ensure that only billing information is included on the invoice. Information related to Client(s) diagnosis, prognosis or treatment is not permitted on the invoice.

Each invoice shall contain all of the following data:

- A. Contractor name, address, and phone number.
- B. Service date(s) and number of Units of Service per service date.
 - 1. Multiple Units of Service: Contractor shall ensure that said invoice clearly documents the date and type of each Unit of Service.
- C. Client name(s).
 - 1. The name of each Client present for each individual service covered by the HHSA Authorization.
 - 2. The names of HHSA Clients covered by the HHSA Authorization being seen at the same time for each "group" type of therapy including but not limited to Group Therapy or Family Therapy.
 - 3. For Court Meeting services, Contractor shall include a list of the names of their clients whose cases were discussed or, for Court cancelled meetings as described in the above service / rate table, scheduled to be discussed during said Court Meeting.
- D. Type of service(s) provided.
- E. Agreement rate for each service provided.
 - 1. All fee(s) charged to County shall be in accordance with the rates as set forth in this Agreement.
- F. Total amount billed to the County of El Dorado under the subject invoice.
- G. Statement verifying Contractor has confirmed Client's appropriate insurance category (see above chart detailing Client insurance coverage) and, if applicable, whether Contractor has billed Client's said health insurance carrier(s) as primary health insurance carrier(s) and, for Clients with private health insurance coverage, if Contractor is only invoicing County for any private health insurance carrier-required co-pays or deductibles.

Contractor is required to submit monthly invoices and reports with a copy of the Authorization, no later than thirty (30) days following the end of a "service month." For billing purposes, a "service month" shall be defined as a calendar month during which Contractor provides Client services in accordance with "Scope of Services." Failure to submit invoices by the 30th of the

month following the end of a service month, failure to attach the appropriate HHSA Authorization, failure to submit all reports required hereunder, or failure for Contractor to ensure that original invoices are submitted or that required reports contain original verifying signatures shall result in payment(s) being withheld until the appropriate documents are received by staff. Receipt by HHSA of invoices and associated paperwork submitted by Contractor for payment shall not be deemed evidence of allowable costs under this Agreement. Upon request by County, Contractor may be required to submit additional or new information, which may delay reimbursement.

Invoices and reports shall be sent as follows:

<i>For Service(s) Authorized by West Slope HHSA Staff, Please Send Invoices to:</i>	<i>For Service(s) Authorized by East Slope HHSA Staff, Please Send Invoices to:</i>
<p style="text-align: center;">County of El Dorado Health and Human Services Agency Attn: Accounting Unit 3057 Briw Road Placerville, CA 95667-5321</p>	<p style="text-align: center;">County of El Dorado Health and Human Services Agency Attn: Accounting Unit 3368 Lake Tahoe Blvd. 100 South Lake Tahoe, CA 96150-7915</p>

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

The total contractual obligation under this Agreement shall not exceed \$375,000.00 for both the stated services and term.

ARTICLE IX

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 "B" (incorporated herein and made by reference a part hereof).

ARTICLE XIV

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 XXV

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

Notice to County shall be in duplicate and addressed as follows:

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

Or to such other location as County directs with a copy to

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

Notices to Contractor shall be addressed as follows:

EDCA LIFESKILLS
893 SPRING STREET
PLACERVILLE, CA 95667
ATTN: DAVID DEL RIO, EXECUTIVE DIRECTOR

Or to such other location as Contractor directs.

ARTICLE XXXV

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

Articles XLII and XLIII shall be added as follows:

ARTICLE XLII

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 XLIII

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.

Former Article XLII is hereby renumbered as Article XLIV and shall read as follows:

ARTICLE XLIV

Entire Agreement: This Agreement for Services #527-S1311 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.

Except as herein amended, all other parts and sections of that Agreement #527-S1311 shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:

By: Mark S. Contois
Mark Contois
Assistant Director
Health and Human Services Agency

Dated: 12/4/13

Requesting Department Head Concurrence:

By: Don Ashton
Don Ashton, M.P.A.
Interim Director
Health and Human Services Agency

Dated: 12/5/2013

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to that Agreement for Services #527-S1310 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

_____, Chair
Board of Supervisors
"County"

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

By: _____
Deputy Clerk

Dated: _____

-- CONTRACTOR --

**EDCA LIFESKILLS
A CALIFORNIA CORPORATION**

By: _____
David Del Rio
Executive Director
"Contractor"

Dated: 12/12/13

By: Thomas Jacobson
Corporate Secretary

Dated: 12-14-13

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**County of El Dorado
Health and Human Services Agency
Monthly Client Progress Report**

Provider's Name: _____

Address: _____

Telephone Number: _____ Fax Number: _____

Client's Name: _____

Social Worker's Name: _____

Dates of sessions since last report (please indicate no shows by writing "N/A" next to the date):

Assessment, goals, and treatment plan:

Progress since last report:

Please complete a progress report on each client referred by the County of El Dorado Health and Human Services Agency-Social Services Division on a monthly basis and send the report to the appropriate office listed below:

West Slope Vendors, send report to:	East Slope Vendors, send report to:
County of El Dorado Health and Human Services ATTN: Accounting Unit 3057 Briw Road Placerville, CA 95667	County of El Dorado Health and Human Services ATTN: Accounting Unit 3368 Lake Tahoe Blvd., #100 South Lake Tahoe, CA 96150

Provider's Signature

Date

Exhibit "B"

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.