

AGREEMENT FOR SERVICES #773-S0811

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**THIS AGREEMENT** made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and MGA Healthcare, Inc., a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 2143 Hurley Way, Suite 221, Sacramento, CA 95825 (hereinafter referred to as "Contractor");

**WITNESSETH**

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide personnel to supplement the Psychiatric Health Facility (PHF) for the Mental Health Department on an "as requested" basis; and

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

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

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

**NOW, THEREFORE**, County and Contractor mutually agree as follows:

## **ARTICLE I**

**Scope of Services:** Contractor agrees upon request by County to provide one or more licensed health care providers (i.e., RNs, LVN/LPT, MHWs, CNAs) as specified by the County Mental Health Department for supplemental staffing services, subject to availability of qualified personnel. Contractor shall supply personnel who meet the following criteria:

- 1) Possess current state license/registration and/or certification;
- 2) Possess CPR certification, as required by State law;
- 3) Meet applicable laws, regulations, and/or accreditation standards, to be presented to County Administrator upon request;
- 4) Be trained in HIPAA privacy compliance and present verification of such training to County upon request;
- 5) Possess proof of pre-employment screening to include a Live Scan (proof of which shall be available to County prior to their first duty shift), a physical (as applicable to State law) and TB skin test, professional references, criminal background check(s) (and drug screenings as applicable); and
- 6) Possess at least one (1) year of relevant professional experience and one (1) year of specialty experience.

Contractor shall maintain direct responsibility as employer for payment of wages, and federal, state and local income taxes, social security taxes, workers' compensation, and unemployment insurance. Contractor agrees to maintain documentation on all personnel provided by Contractor in an employee file.

When applicable, Contractor agrees that in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, books, documents and records will be made available to the Comptroller General of the United States, the United States Department of Health and Human Services ("USDHHS") and their duly authorized representative until the expiration of four (4) years after the date on which such services were furnished under this Agreement.

Contractor shall coordinate with County to promptly provide Contractor personnel with an orientation of County facility. Contractor shall review instructions regarding confidentiality (including patient and employee), and orient Contractors' personnel to the specific Exposure Control Plan of the facility as it pertains to OSHA requirements for bloodborne pathogens, as well as any of the facility's specific policies and procedures provided to Contractor for such purpose.

County retains full authority and responsibility for professional and medical management of care for each of its patients and for ensuring that services provided by Contractor personnel under this Agreement are furnished in a safe and effective manner and in accordance with applicable standards.

County shall use its best efforts to request personnel at least twenty-four (24) hours prior to reporting time in order to assure prompt arrival of assigned personnel. All information regarding reporting time and assignment shall be provided by County at the time of the initial call.

Contractor shall bill County for the entire shift if an order for staff is made less than two (2) hour(s) prior to the start of the shift, as long as the individual reports for work within a reasonable prompt period of time under existing conditions after receiving notice of the assignment.

If County changes or cancels an order less than four (4) hours prior to the start of a shift, Contractor shall bill County for four (4) hours at the established fee for each scheduled personnel. Contractor shall be responsible for contacting Contractors' personnel prior to reporting time.

If County concludes, in its sole discretion, that any personnel provided by Contractor have engaged in misconduct, or have been negligent, County may require the individual to leave the premises and will notify Contractor in writing, providing in reasonable detail the reasons(s) for such dismissal. County's obligation to compensate Contractor for such individual's services will be limited to the number of hours actually worked. Contractor shall not reassign the individual to the facility without prior approval of the County.

County may request the dismissal of any Contractor personnel for any reason. County agrees to notify Contractor of any such action immediately in writing, providing in reasonable detail the reasons (s) for such dismissal. County shall be obligated to compensation Contractor personnel for all hours worked prior to dismissal.

In all instances where personnel are supervised by County, County shall document and develop an incident report of any injury, illness, or ailment experienced by Contractor's personnel at the facility workplace in accordance with applicable federal, state and local laws, rules and regulations.

Neither Contractor nor County shall discriminate on the basis of age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era, or any other category protected by law.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall expire October 31, 2010.

## **ARTICLE III**

**Compensation for Services:** 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. For the purposes of this Agreement, the billing rate shall be in accordance with Exhibit "A", marked "Fee Schedule", incorporated herein and made by reference a part hereof. Contractor reserves the right to increase rates within thirty (30) days written notice to the Mental Health Director, in accordance with **Article XIII – Notice to Parties**, herein.

Total amount of this Agreement shall not exceed \$200,000.00.

#### **ARTICLE IV**

**HIPAA Compliance:** All data, together with any knowledge otherwise acquired by Consultant during the performance of services provided pursuant to this Agreement, shall be treated by Consultant and Consultant's staff as confidential information. Consultant shall not disclose or use, directly or indirectly, at any time, any such confidential information. If the Consultant receives any individually identifiable health information ("Protected Health Information" or "PHI"), the Consultant shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

#### **ARTICLE V**

**RNs, LVN/LPT, MHWs, CNAs – Placement Fee:** For a period of six (6) months following that date on which a Contractor personnel member last worked a shift at the County, County agrees that it will take no steps to recruit, hire or employ as its own employees or as a contractor those personnel provided by Contractor during the term of this Agreement. County understands and agrees that Contractor is not an employment agency and that personnel are assigned to the facility to render temporary service(s) and are not assigned to become employed by the County. The County further acknowledges and agrees that the substantial investment in business related costs incurred by Contractor in recruiting, training and employing personnel, which includes advertising, recruiting, interviewing, evaluating, reference checking, training, and supervising personnel. In the event that County, or any affiliate, subsidiary, department, or division of County hires, employs or solicits Contractor personnel, County will be in breach of this Agreement. County agrees to give Contractor (a) one hundred and eighty (180) days prior written notice of its intent to hire, or employ continuing to staff personnel through Contractor for a minimum of thirty-six (36) hours per week through the one hundred and eighty (180) days notice period; or (b) to pay Contractor liquidated damages equal to the greater of: five thousand dollars (\$5,000) or the sum of thirty percent (30%) of such personnel's annualized salary (calculated as Weekday Hourly Pay Rate x 2080 Hours x 30%).

#### **ARTICLE VI**

**Physicians/Psychiatrists Permanent Recruitment and Non-Solicitation:** County may wish to enter into a direct long- or short-term relationship with a Physician who has worked with County or has been introduced through Contractor. Contractor's business depends on preserving their locum tenens network, which they have expended considerable resources to develop and maintain. Therefore, as separate consideration for their efforts in locating and referring a Physician to County, County agrees to pay Contractor a permanent recruitment fee in the amount of twenty-four thousand dollars (\$24,000) for any Physician introduced to County by Contractor. County must inform Contractor within twenty-four (24) hours if any Physician presented by Contractor is already known to the County. Otherwise, the Physician(s) will be conclusively presumed to have been introduced by Contractor to County. Any Physician who has provided services for County through Contractor who:

- accepts a position, during the term of this Agreement or within (2) years after its termination and whether or not in the area served by County's facility, practice where the Physician performed service(s), or was introduced to perform locum tenens services for County, with County or any affiliate (meaning any individual practice, group, clinic, or other organization that is owned, managed or operated, directly or indirectly, by County or by any persons or entities of which County is, directly or indirectly, an owner, partner, agent, employee or subsidiary, or with whom County regularly provide medical services through licensed Physicians, or that is jointly owned or controlled by or with County) or,
- accepts a position in the area served by County's facility or practice in which the Physician provided locum tenens coverage under this Agreement, during the term of this Agreement or within two (2) years after its termination, if County assists in obtaining the position or receives any services or benefits as a result of the Physician's placement, or
- engages in locum tenens coverage, other than through Contractor, for County or any of County's affiliates (as defined above), whether or not in the area served by County practice or facility where the Physician performed locum tenens services for County, during the term of this Agreement or within two years after its termination.

If the Physician accepts a permanent position, the recruitment fee is due in full and payable on the first day the Physician performs services in the new permanent position. If the Physician provides services in any temporary position (including non-Contractor locum tenens coverage), the recruitment fee shall be paid to Contractor ratably, in amounts equal to the locum tenens fees that County would have paid if the services were performed under this Agreement.

Contractor Agreements with Physicians have similar limitations and conditions on accepting other positions with County or County affiliates and within County community.

The restrictions and obligations of this Permanent Recruitment section will last during the term of this Agreement or for two (2) years after its termination, at any time or for any reason, and regardless of whether either Contractor or County is in breach of any other terms of this Agreement.

For County protection, Contractor Physician Agreement requires County consent to any placement of, or practice by, the Physician within the area served by County facility or practice in which the Physician provides services under this Agreement during the term of this Agreement or two (2) years after the Physician's contract with Contractor terminates (which may occur later than the date the Physician completes an assignment with County).

## **ARTICLE VII**

**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 VIII**

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

## **ARTICLE IX**

**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 X**

**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 XI**

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

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

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

## **ARTICLE XII**

### **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 within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

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

- B. **Bankruptcy:** This Agreement, at the option of the 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 Contractor 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 written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

**ARTICLE XIII**

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

COUNTY OF EL DORADO  
DEPARTMENT OF MENTAL HEALTH  
670 PLACERVILLE DRIVE, SUITE 3  
PLACERVILLE, CA 95667  
ATTN: MARLENE HENSLEY, PROGRAM MANAGER - PHF

and

COUNTY OF EL DORADO  
DEPARTMENT OF MENTAL HEALTH  
670 PLACERVILLE DRIVE, SUITE 3  
PLACERVILLE, CA 95667  
ATTN: CONTRACTS

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

MGA HEALTHCARE, INC.  
2143 HURLEY WAY, SUITE 221  
SACRAMENTO, CA 95825  
ATTN: CLIFF MITCHELL

or to such other location as the Contractor directs.

with a carbon copy to

COUNTY OF EL DORADO  
CHIEF ADMINISTRATIVE OFFICE  
PROCUREMENT AND CONTRACTS DIVISION  
330 FAIR LANE  
PLACERVILLE, CA 95667  
ATTN: BONNIE H. RICH, PURCHASING AGENT



#### **ARTICLE XIV**

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

#### **ARTICLE XV**

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor 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 El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

- 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 Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
  2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- 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 insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

- 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 the County.

#### **ARTICLE XVI**

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

#### **ARTICLE XVII**

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

#### **ARTICLE XVIII**

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

#### **ARTICLE XIX**

**California Residency (Form 590):** All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

**ARTICLE XX**

**Taxpayer Identification Number (Form W-9):** All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

**ARTICLE XXI**

**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 El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

**ARTICLE XXII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Marlene Hensley, Program Manager – PHF, Mental Health Department, or successor.

**ARTICLE XXIII**

**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 XXIV**

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

**ARTICLE XXV**

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

**ARTICLE XXVI**

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

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**REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Marlene Hensley, Program Manager - PHF  
Mental Health Department

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
John Bachman, Director  
Mental Health Department

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

**-- COUNTY OF EL DORADO --**

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

By: \_\_\_\_\_  
Chairman  
Board of Supervisors  
"County"

ATTEST:  
Cindy Keck, Clerk  
of the Board of Supervisors

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

**-- CONTRACTOR --**

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

MGA HEALTHCARE, INC.  
A CALIFORNIA CORPORATION

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

Cliff Mitchell  
Accounts Manager  
"Contractor"

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

Corporate Secretary

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