

# ORIGINAL

## AGREEMENT FOR SERVICES

#421-PHD0205

### SUBSTANCE ABUSE TREATMENT SERVICES *for the* COMPREHENSIVE DRUG COURT IMPLEMENTATION DEPENDENCY DRUG COURT SERVICES

PROGRESS HOUSE, INC.

#### Amendment I

**THIS AMENDMENT I** to that **AGREEMENT** made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Progress House, Inc., a California Nonprofit Public Benefit Corporation qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 2914 "B" Cold Springs Road, Placerville, CA 95667 (hereinafter referred to as "Contractor");

#### WITNESSETH

**WHEREAS**, Contractor is currently under agreement with County to provide substance abuse treatment services for participants in the Comprehensive Drug Court Implementation (CDCI) Dependency Drug Court Program; and

**WHEREAS**, County has received a CDCI Dependency Drug Court Agreement from the State amending the term of the grant which necessitates the extension of the term of the Agreement with Contractor; and

**WHEREAS**, County has received additional funding from the State for CDCI Dependency Drug Court services and wishes to allocate additional funding to Contractor;

**NOW, THEREFORE**, County and Contractor mutually agree to replace **Article I, Scope of Services, Article II, Term** and **Article III, Compensation for Services** in their entirety with the following:

## ARTICLE I

### Scope of Services:

- A. Contractor will provide individual outpatient substance abuse treatment, group outpatient treatment, residential treatment, transitional housing, parenting education groups, vocational education groups, and instant response drug testing for participants in the Dependency Drug Court Program, which is funded through the CDCI Dependency Drug Court grant. Clients will be selected for participation in this program by the County and referred to Contractor for substance abuse treatment services. Such referrals will identify the treatment services clients are authorized to receive, and Contractor shall deliver services consistent with those authorized.
- B. Contractor shall provide or purchase incentives and/or other ancillary services when directed to do so by County.
- C. Contractor must notify the County's Dependency Drug Court Coordinator prior to terminating any Dependency Drug Court client from treatment.
- D. Contractor shall attend pre-court case management conferences and, upon request, shall attend court sessions, which take place twice monthly. County will furnish Contractor with the schedule of Dependency Drug Court sessions and provide reasonable advance notice of pre-court case management conference times and locations.
- E. For every Dependency Drug Court client, Contractor shall assign a staff member to be responsible for performing case management functions and attending case management conferences.
- F. Contractor shall develop treatment plans based upon the results of clients' substance abuse assessment, which will be performed by the County and provided to Contractor. In addition, the County may direct Contractor to provide specific services as allowed under this contract, and the Contractor shall do so upon receiving written instruction from the County.
- G. Contractor shall designate a Dependency Drug Court contact person from among its staff, and this person shall serve as the primary point of contact for the County in exchanging information related to the Dependency Drug Court program.
- H. Contractor shall prepare client progress reports in a County approved format. Contractor shall submit weekly reports to the County's Dependency Drug Court Coordinator or designee, and shall submit written reports to the Court at least one day prior to each scheduled Dependency Drug Court session.
- I. Contractor shall participate in the Dependency Drug Court data collection system required by the County. Data to be collected by the Contractor may include, but is not

limited to, the following:

- 1) Demographic information,
  - 2) Medical information,
  - 3) Family and social status information,
  - 4) Drug and alcohol use information,
  - 5) Legal status information, and
  - 6) Other pertinent data that may be identified by the County and/or the Grantor, including but not limited to California Alcohol and Drug Data System (CADDSS) reporting.
- J. Contractor shall respond in writing within five (5) business days to the County's request for data, shall cooperate fully in the preparation and dissemination of reports based on data collected, and shall expand or modify data collection processes in accordance with County directives.
- K. Contractor shall attend and participate in Dependency Drug Court program planning, development, and evaluation meetings upon request from the County. Attendance at these meetings shall not be required more often than quarterly.
- L. Contractor shall respond in writing within five (5) work days to the County's request for any program or fiscal information, such as educational materials, forms, client records, and/or invoices.
- M. Contractor shall only employ individuals in substance abuse treatment positions who meet all applicable State requirements pertaining to certification and/or licensure, and who are qualified and competent to perform the tasks assigned to them. Contractor shall regularly evaluate the performance of all its treatment staff and implement immediate corrective action if any performance problems are identified. The County may request in writing that the Contractor investigate incidents of suspected poor performance by Contractor treatment staff, and the Contractor shall do so within the timeframes and under the terms contained in the County's written request.
- N. Contractor shall, to the extent feasible, provide services pursuant to this Agreement in a culturally competent manner by recruiting, hiring and maintaining trained, experienced staff who are able to deliver services with sensitivity toward and respect for clients from diverse backgrounds. This includes, but is not limited to, providing services to non-English speaking clients.
- O. Contractor agrees to adhere to all the requirements for public or private subcontractors in the ***CDCI and PSSF Common Terms and Conditions***, attached hereto as ***Exhibit A*** and made by reference a part hereof.

**ARTICLE II**

**Term:** This Agreement is effective January 1, 2005, and will remain in effect through June 30, 2006, consistent with the Grant term.

**ARTICLE III**

**Compensation for Services:**

- A. Payment for Dependency Drug Court substance abuse treatment services for the term of the contract shall not exceed \$37,886. The term of the grant award spans multiple County fiscal years. Therefore, Contractor payments for treatment services are subject to certain time restrictions, in addition to the maximum allowable amounts stated above. The applicable time restrictions are shown on the following table:

<b>Funding falls within:</b>	<b>County Fiscal Year 04/05</b>	<b>County Fiscal Year 05/06</b>	<b>Total</b>
<b>Grant Funding Period:</b>	1-1-05 to 6-30-05	7-1-05 to 6-30-06	
<b>Drug Treatment/ Ancillary Services</b>	\$10,500 May be spent anytime during contract term.	\$27,386 May <b>not</b> be spent <b>before</b> 7-1-05	\$37,886

- B. County shall reimburse Contractor within forty-five (45) days of receipt of original invoices that are submitted to the Public Health Department Alcohol and Drug Program Division on the County approved invoice form, are complete and accurate, and include all County required back-up forms, reports, or other documentation.
- C. Invoices are due by the tenth (10<sup>th</sup>) day of the month following the month in which services were delivered. Invoices submitted later than the last day of the month in which services were delivered will be considered retroactive. Retroactive invoices shall be ineligible for payment unless there are extenuating circumstances that justify submission of such invoices, and the County has authorized retroactive billing in advance of the invoice submission date.
- D. Allowable services having fixed-price payment amounts under this contract are limited to:

- 1. Residential Day:
  - Men \$60.00
  - Women \$75.00
  - Perinatal \$95.00
- 2. Outpatient Individual Session (1 hour) \$95.00
- 3. Outpatient Group Session (1.5 hours) \$35.00
- 4. Instant Response Drug Testing (per test) \$30.00
- 5. Attendance at pre-Court Conference (0.5 hours) \$13.33
- 6. Attendance at Dependency Drug Court Session (1 hour) \$26.67

7. Parenting Education Group (1.5 hours)	\$35.00
8. Vocational Education Group (1.5 hours)	\$35.00
9. Transitional Housing (per day, all inclusive)	\$15.00

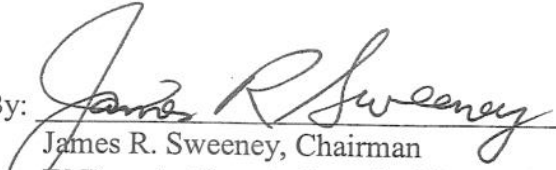
- E. County authorized incentives and/or other ancillary services shall be reimbursed at cost. Invoices for incentives and/or ancillary services shall be accompanied by backup documentation comprised of the County's referral/authorization form and verification of Contractor's actual cost for providing or purchasing the incentive or ancillary service.

Contractor shall invoice the County only for those Dependency Drug Court services that have received pre-authorization from the County, and for those Dependency Drug Court clients who have been referred for treatment by the County.

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

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

**COUNTY OF EL DORADO**


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

Date: 3-28-06

**ATTEST:**  
Cindy Keck, Clerk

By:  Date: 3-28-06  
Deputy Clerk

**PROGRESS HOUSE, INC.**

By:   
Tom Avey, Executive Director  
Progress House, Inc.  
A California 501(c)(3) corporation

Date: 3/12/06

**ORIGINAL**  
**AGREEMENT**

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### SUBSTANCE ABUSE TREATMENT SERVICES *for the* COMPREHENSIVE DRUG COURT IMPLEMENTATION DEPENDENCY DRUG COURT SERVICES

**PROGRESS HOUSE, INC.**

**THIS AGREEMENT** made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Progress House, Inc., a California Nonprofit Public Benefit Corporation qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 2914 "B" Cold Springs Road, Placerville, CA 95667 (hereinafter referred to as "Contractor");

#### WITNESSETH

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide substance abuse treatment services for participants in the Comprehensive Drug Court Implementation (CDCI) Dependency Drug Court Program; 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 such services provided by Contractor are in the public's best interest, are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

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



## ARTICLE I

### Scope of Services:

- A. Contractor will provide individual outpatient substance abuse treatment, group outpatient treatment, residential treatment, parenting education groups, vocational education groups, and instant response drug testing for participants in the Dependency Drug Court Program, which is funded through the CDCI Dependency Drug Court grant. Clients will be selected for participation in this program by the County and referred to Contractor for substance abuse treatment services. Such referrals will identify the treatment services clients are authorized to receive, and Contractor shall deliver services consistent with those authorized.
- B. Contractor shall provide or purchase incentives and/or other ancillary services when directed to do so by County.
- C. Contractor must notify the County's Dependency Drug Court Coordinator prior to terminating any Dependency Drug Court client from treatment.
- D. Contractor shall attend pre-court case management conferences and, upon request, shall attend court sessions, which take place twice monthly. County will furnish Contractor with the schedule of Dependency Drug Court sessions and provide reasonable advance notice of pre-court case management conference times and locations.
- E. For every Dependency Drug Court client, Contractor shall assign a staff member to be responsible for performing case management functions and attending case management conferences.
- F. Contractor shall develop treatment plans based upon the results of clients' substance abuse assessment, which will be performed by the County and provided to Contractor. In addition, the County may direct Contractor to provide specific services as allowed under this contract, and the Contractor shall do so upon receiving written instruction from the County.
- G. Contractor shall designate a Dependency Drug Court contact person from among its staff, and this person shall serve as the primary point of contact for the County in exchanging information related to the Dependency Drug Court program.
- H. Contractor shall prepare client progress reports in a County approved format. Contractor shall submit weekly reports to the County's Dependency Drug Court Coordinator or designee, and shall submit written reports to the Court at least one day prior to each scheduled Dependency Drug Court session.
- I. Contractor shall participate in the Dependency Drug Court data collection system required by the County. Data to be collected by the Contractor may include, but is not limited to, the following:

- 1) Demographic information,
  - 2) Medical information,
  - 3) Family and social status information,
  - 4) Drug and alcohol use information,
  - 5) Legal status information, and
  - 6) Other pertinent data that may be identified by the County and/or the Grantor, including but not limited to California Alcohol and Drug Data System (CADDSS) reporting.
- J. Contractor shall respond in writing within five (5) business days to the County's request for data, shall cooperate fully in the preparation and dissemination of reports based on data collected, and shall expand or modify data collection processes in accordance with County directives.
- K. Contractor shall attend and participate in Dependency Drug Court program planning, development, and evaluation meetings upon request from the County. Attendance at these meetings shall not be required more often than quarterly.
- L. Contractor shall respond in writing within five (5) work days to the County's request for any program or fiscal information, such as educational materials, forms, client records, and/or invoices.
- M. Contractor shall only employ individuals in substance abuse treatment positions who meet all applicable State requirements pertaining to certification and/or licensure, and who are qualified and competent to perform the tasks assigned to them. Contractor shall regularly evaluate the performance of all its treatment staff and implement immediate corrective action if any performance problems are identified. The County may request in writing that the Contractor investigate incidents of suspected poor performance by Contractor treatment staff, and the Contractor shall do so within the timeframes and under the terms contained in the County's written request.
- N. Contractor shall, to the extent feasible, provide services pursuant to this Agreement in a culturally competent manner by recruiting, hiring and maintaining trained, experienced staff who are able to deliver services with sensitivity toward and respect for clients from diverse backgrounds. This includes, but is not limited to, providing services to non-English speaking clients.
- O. Contractor agrees to adhere to all the requirements for public or private subcontractors in the *CDCI and PSSF Common Terms and Conditions*, attached hereto as *Exhibit A* and made by reference a part hereof.

## ARTICLE II

**Term:** This Agreement is effective January 1, 2005, and will remain in effect through December 28, 2005, consistent with the Grant term.

**ARTICLE III**

**Compensation for Services:**

- A. Payment for Dependency Drug Court substance abuse treatment services for the term of the contract shall not exceed \$21,000. The term of the grant award spans multiple County fiscal years. Therefore, Contractor payments for treatment services are subject to certain time restrictions, in addition to the maximum allowable amounts stated above. The applicable time restrictions are shown on the following table:

<b>Funding falls within:</b>	<b>County Fiscal Year 04/05</b>	<b>County Fiscal Year 05/06</b>	<b>Total</b>
<b>Grant Funding Period:</b>	1-1-05 to 6-30-05	7-1-05 to 12-28-05	
<b>Drug Treatment/ Ancillary Services</b>	\$10,500 May be spent anytime during contract term.	\$10,500 May not be spent before 7-1-05	\$21,000

- B. County shall reimburse Contractor within forty-five (45) days of receipt of original invoices that are submitted to the Public Health Department Alcohol and Drug Program Division on the County approved invoice form, are complete and accurate, and include all County required back-up forms, reports, or other documentation.
- C. Invoices are due by the tenth (10<sup>th</sup>) day of the month following the month in which services were delivered. Invoices submitted later than the last day of the month in which services were delivered will be considered retroactive. Retroactive invoices shall be ineligible for payment unless there are extenuating circumstances that justify submission of such invoices, and the County has authorized retroactive billing in advance of the invoice submission date.
- D. Allowable services having fixed-price payment amounts under this contract are limited to:
1. Residential Day:
 

Men	\$60.00
Women	\$75.00
Perinatal	\$95.00
  2. Outpatient Individual Session (1 hour) \$95.00
  3. Outpatient Group Session (1.5 hours) \$35.00
  4. Instant Response Drug Testing (per test) \$30.00
  5. Attendance at pre-Court Conference (0.5 hours) \$13.33
  6. Attendance at Dependency Drug Court Session (1 hour) \$26.67
  7. Parenting Education Group (1.5 hours) \$35.00
  8. Vocational Education Group (1.5 hours) \$35.00

- E. County authorized incentives and/or other ancillary services shall be reimbursed at cost. Invoices for incentives and/or ancillary services shall be accompanied by backup documentation comprised of the County's referral/authorization form and verification of Contractor's actual cost for providing or purchasing the incentive or ancillary service.
- F. Contractor shall invoice the County only for those Dependency Drug Court services that have received pre-authorization from the County, and for those Dependency Drug Court clients who have been referred for treatment by the County.

#### **ARTICLE IV**

**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 V**

**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 VI**

**Drug Free Work Place:** By signing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Work Place Act of 1990 (Gov. Code ~ 8350, et seq.), and will provide a drug-free work place by taking the following actions:

- A. Publish a drug-free policy statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's work place, and specifying the actions that will be taken against employees for violations of the prohibitions, as required by Gov. Code Sections 8355 and 8355(a).
- B. Establish a drug-free awareness program as required by Gov. Code Section 8355(b) to inform employees about all of the following:
  - 1. the dangers of drug abuse in the work place;
  - 2. the person or organization's policy of maintaining a drug-free work place;
  - 3. any available drug counseling, rehabilitation, and employee assistance programs; and

4. the penalties that may be imposed upon employees for drug abuse violations.
- C. Provide, as required by Gov. Code Section 8355 (c), that every employee engaged in the performance of the CDCI Program:
1. Be given a copy of the Contractor's drug-free policy statement; and
  2. As a condition of this Agreement, agree to abide by the terms of the aforementioned statement.

## **ARTICLE VII**

### **Record Keeping Requirements:**

- A. Accurate fiscal, programmatic, and client records, and associated support documentation, shall be maintained by the Contractor to support all claims for reimbursement.
- B. The Contractor shall retain fiscal, programmatic, and client records for a five-year period from the date the final payment is made pursuant to this Agreement. When an audit has been started before the expiration of the five-year period, the records shall be retained until completion of the audit and final resolution of all issues that arise as a result of the audit.
- C. Records maintained in accordance with this Agreement are subject to examination and audit by the County, or the County's authorized representative(s), or by the California Bureau of State Audits for a period of five years from the date final payment is made pursuant to the CDCI Program (Gov. Code §10532).

## **ARTICLE VIII**

### **Confidentiality of Information:**

- A. The Contractor shall conform to and monitor compliance with all State and federal statutes and regulations regarding confidentiality, including the confidentiality of information requirements at Part 2, Title 42, Code of Federal Regulations (CFR), Welfare and Institutions Code (W&IC), Section 14100.2; Section 11977, Division 10.5 of the Health and Safety Code (HSC); and Title 22, California Code of Regulations (CCR), Section 51009.
- B. The Contractor shall ensure that no list of persons receiving services under this Agreement is published, disclosed, or used for any purpose except for the direct administration of this program or other uses authorized by law that are not in conflict with requirements for confidentiality contained in Title 42, CFR, Part 2; W&IC, Section 14100.2; HSC, Section 11977; and Title 22, CCR, Section 51009.

## **ARTICLE IX**

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

## **ARTICLE X**

**Audits:** The Contractor must allow representatives of the County access to any and all records needed for contract monitoring and audit purposes. Contractor agrees to participate in site visits and/or audits as requested by the County or the County's authorized representative(s). Site visits and audits may be conducted for the purpose of programmatic and/or fiscal review.

## **ARTICLE XI**

### **Equal Opportunity Clause/Nondiscrimination:**

- A. The Contractor certifies compliance with Gov. Code, Section 12990 and CCR, Title II, Division 4, Chapter 5, in matters related to the development, implementation and maintenance of a nondiscrimination program. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, physical or mental disability, marital status, sex, or age. The Contractor will ensure that qualified applicants have equal opportunity for employment, and that qualified employees have equal opportunity during employment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, career development opportunities, and selection for training, including apprenticeship.
- B. The Contractor agrees to post, in conspicuous places, notices available to all employees and applicants for employment setting forth the provisions of the Equal Opportunity Act (42 U.S.C. 2000 (e)) in conformance with Federal Executive Order No. 11246. The Contractor agrees to comply, with the provisions of the Rehabilitation Act of 1973 (29 U.S.C. 794).
- C. By signing this Agreement the Contractor certifies under the laws of the State of California that the Contractor shall not unlawfully discriminate in the provision of services because of race, color, creed, national origin, sex, age, or physical or mental disability as provided by State and federal law and in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)); Age Discrimination Act of 1975 (42 U.S.C. 6101); Rehabilitation Act of 1973 (29 U.S.C. 794); Education Amendments of 1972 (20 U.S.C. 1681); Americans with Disabilities Act of 1990 (42 U.S.C. 12132); Title 45, CFR, Part 84; provisions of the Fair Employment and Housing Act (Gov. Code § 12900 et seq.); and regulations promulgated thereunder (Title 2, CCR, § 7285.0 et seq.); Title 2, Division 3, Article 9.5 of the Gov. Code, commencing with Section 11135; and Title 9, Division 4, Chapter 6 of the CCR, commencing with Section 10800.

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

## **ARTICLE XII**

**No Unlawful Use or Unlawful Use Messages Regarding Alcohol and Other Drugs:** The Contractor agrees that information produced through these funds, which pertains to drug and alcohol-related programs, and/or clinics, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program and/or clinic. Additionally, no aspect of a drug or alcohol-related treatment program, and/or clinic, shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (HSC § 11999 (b) and (d) through (h), et seq.). The Contractor agrees to enforce these requirements by signing this Agreement.

## **ARTICLE XIII**

**Smoking Prohibition Requirements:** The Contractor agrees to comply with Public Law 103-227, also known as the Pro-Children Act of 1994 (20 USC § 6081, et seq.), which, in part, prohibits smoking within any portion of any indoor facility (enclosed structure) owned or leased or granted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by federal grant, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities and are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for in-patient drug or alcohol treatment, service providers whose sole source of applicable federal funds is Medicare or Medicaid, or facilities where the Women, Infants, and Children Program's coupons are redeemed.

## **ARTICLE XIV**

### **Hazardous Activities:**

- A. The Contractor shall have liability insurance sufficient to cover hazardous activities pursuant to Section 7.40 of the State Contracting Manual.

- B. The Contractor shall maintain, at all times during the term of this Agreement, insurance and bonding, for bodily injury and property damage liability combined, of not less than \$1 million per occurrence and shall otherwise comply with Section 7.40 of the State Contracting Manual.

#### **ARTICLE XV**

**Remedies For Noncompliance:** The Contractor shall comply with all terms and conditions of this Agreement and all pertinent State and federal statutes and regulations. Failure to comply with the terms of this Agreement may result in non-payment of Contractor invoices and/or termination of this Agreement pursuant to Article XIX of this Agreement.

#### **ARTICLE XVI**

**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 XVII**

**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 XVIII**

**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.

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

#### **ARTICLE XIX**

##### **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 in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in 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 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 seven (7) calendar days upon written notice by County for any reason. 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. 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.

## ARTICLE XX

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

## ARTICLE XXI

**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 Worker's 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 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- 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 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 the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- 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 term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- 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 all liability policies except worker's compensation and professional liability insurance policies.
- 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 in 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 the Risk Management Division, as essential for protection of the County.

#### **ARTICLE XXII**

**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 XXIII**

**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 XXIV**

**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 XXV**

**Taxpayer Identification / Form W9:** All individuals/sole proprietors, corporations, partnerships, associations, organizations or public entities providing services to the County shall provide a fully executed Department of the Treasury Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification".

**ARTICLE XXVI**

**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. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

**ARTICLE XXVII**

**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, Certified, Return Receipt Requested.

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

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: GAYLE ERBE-HAMLIN, DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

PROGRESS HOUSE, INC.  
2914 "B" COLD SPRINGS ROAD  
PLACERVILLE, CA 95667  
ATTN: TOM AVEY, EXECUTIVE DIRECTOR

or to such other location as the Contractor directs.

**ARTICLE XXVIII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Public Health Department Director, or successor.

**ARTICLE XXIX**

**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 XXX**

**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 XXXI**

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

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

**COUNTY OF EL DORADO**

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

Date: 4/26/05

**ATTEST:**  
Cindy Keck, Clerk

By: Stephen Tyler  
Deputy Clerk

Date: 4/26/05

**PROGRESS HOUSE, INC.**

By: Tom Avey  
Tom Avey, Executive Director  
Progress House, Inc.  
A California 501(c)(3) corporation

Date: 4/5/05

## **CDCI and PSSF Common Terms and Conditions**

### **I. Authority**

Authority to grant these funds is provided under Article 4, Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code (HSC), Sections 11970.1 through 11970.4.

### **II. Fiscal Terms and Conditions**

- A. Allowable costs are those costs that are directly related to the Grantee's Application and presented in a budget within the Application (see Section III below for instruction on budget modifications), and for Promoting Safe and Stable Families (PSSF) funds, that comply with Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.
- B. Grantees are prohibited from supplanting existing funding for any drug court-related activity or substance abuse treatment.
- C. It is mutually agreed that if the State Budget Act does not appropriate sufficient funds for this Grant, this Grant shall be invalid and have no further force and effect. In this event, the Grantor shall have no liability to pay any funds whatsoever to the Grantee or to furnish any other consideration under this Grant and the Grantee shall not be obliged to perform pursuant to any provisions of this Grant.

### **III. Budget Modifications**

- A. The budget format consists of budget categories and line items. There are two budget categories: Treatment-Related Costs; and Court-Related and Other Costs. Line items under Treatment-Related Costs include personnel, fringe benefits, supplies, and contractual costs. Line items under Court-Related and Other Costs include personnel, fringe benefits, travel, equipment, supplies, training, and contractual costs. Instructions for budget modifications are as follows:
  - 1. Grantees may shift up to ten percent of the total budget category amount within each distinct budget category. However, within 30 calendar days of shifting funds, the Grantee shall notify the Grantor's Project Coordinator in writing of the changes.



2. A singular or cumulative shift in excess of ten percent of the amount within the budget category requires prior written approval from the Grantor's Project Coordinator.
  3. Prior to a shift of funds between categories, Grantees are required to submit a written request. Only upon receiving written approval, from the Grantor's Project Coordinator, may the Grantee shift funds between categories.
  4. All budget modifications submitted must be jointly reviewed and approved by the County Alcohol and Drug Program Administrator and Presiding Judge prior to submission to the Department.
  5. All requests for approval of budget modifications must include the following items:
    - (a) a written statement of the modification requested;
    - (b) a detailed description of why the modification is necessary;
    - (c) the adverse effects of not approving the requested modification; and
    - (d) a revised budget with columns showing the original budget amounts, modifications, and new budget amounts.
- B. All budget modifications, excluding the modifications described in paragraph one, require review and approval from the Grantor prior to implementation. The Grantor reserves the right to reject any request to modify the line item budget.

#### **IV. Claim Procedures**

- A. Grantees will be reimbursed in arrears for actual allowable expenditures incurred under this Grant.
- B. Grantees must seek reimbursement from the Grantor by submitting a complete Comprehensive Drug Court Implementation Program – Reimbursement Claim Form, which is attached and incorporated by this reference.

Claims shall be submitted to:  
CDCI Project Coordinator

Office of Drug Court Programs  
1700 K Street  
Sacramento, CA 95814.

- C. The Grantee must submit a single countywide - Reimbursement Claim Form, which shall include all grant-related expenditures for the billing period, no more and no less frequently than once each quarter of the project budget year (i.e., every three months), due 30 days after the end of each three month period.
- D. Reimbursement Claim Forms will be processed after the Grantor has received and accepted the quarterly reports for the billing period (see Section XA).
- E. Reimbursement Claim Forms must be reviewed and approved by the Grantor's Project Coordinator prior to submission to the Accounting Office for payment.

#### **V. Statewide Evaluation Requirements**

- A. All Grantees will participate in the statewide Evaluation of the Comprehensive Drug Court Implementation Program.
- B. All Grantees must provide the requested information for the statewide data collection system.

#### **VI. Program Terms and Conditions**

Grantee will follow the program goals and objectives, tasks, and time frames, as outlined in its Application, and incorporated by this reference.

#### **VII. Audits**

Audits may be requested for the purpose of programmatic and/or fiscal review.

#### **VIII. Program Modifications**

- A. Grantee may request in writing to alter the goals, objectives, design of the Application, timeframes, tasks, etc., during the award period. Grantee must present a written request for approval to the Grantor's Project Coordinator for all program modifications. The Grantee must have written approval from the Grantor's Project Coordinator prior to implementing desired program modifications.

- B. All program modifications that affect the program budget must also include a budget modification request (see Section III).
- C. The Grantor's Project Coordinator may deny requests for modifications that move the project outside of the scope of the program application or impede the statewide Evaluation of the Comprehensive Drug Court Implementation Program. Denials shall be based solely on the discretion of the Grant Project Coordinator. Denials are not subject to appeal.
- D. Any modifications made prior to obtaining written approval are subject to denial from the Project Coordinator, which may result in denial of payment for all charges related to the modifications made.

**IX. Record Keeping Requirements**

- A. Accurate fiscal records and supporting documentation shall be maintained by the Grantee and its sub-Grantees or contractors to support all claims for reimbursement.
- B. The Grantee is responsible to retain fiscal and program records for the required retention period.

**X. Reporting Requirements**

- A. All Grantees are required to submit quarterly reports, every three months during the project budget period, due 30 days after the end of each three-month period. These reports must include the following:
  - 1. goals and objectives for the quarter;
  - 2. all goals and objectives met;
  - 3. all goals and objectives not met and why;
  - 4. obstacles or problems encountered and planned solutions;
  - 5. goals for the next quarter;
  - 6. outcome measure information, as required by the statewide Evaluation (see Section V); and
  - 7. a Reimbursement Claim Form of all grant funds and matching funds for CDCI, expended to pay for allowable costs during the quarter (see Section IV).

- B. Receipt and approval of the quarterly report is a prerequisite to processing the - Reimbursement Claim Form (see Section IV).
- C. All Grantees are required to submit a comprehensive report at the end of the project budget period. Comprehensive reports are due 30 days after the end of the project budget period and must include the following:
1. goals and objectives for the period;
  2. all goals and objectives met;
  3. all goals and objectives not met and why;
  4. outcome measure information, as required by the statewide Evaluation (see Section V); and
  5. a fiscal report of all grant funds and matching funds for CDCI, expended to pay for allowable costs during the project budget period.
- D. The Grantee shall comply and require all their sub-Grantees or contractors to comply with the California Alcohol and Drug Data System (CADDs), Participant (Admission and Discharge) Records (ADP Form 7360) and the California Alcohol and Drug Data System (CADDs) Provider Summary Report (ADP Form 7365) incorporated by this reference, or any automated systems subsequently developed to fulfill the Grantor's client reporting requirements.
- E. The Grantee shall comply and require all their sub-Grantees or contractors to comply with the Drug and Alcohol Services Information System Uniform Facility Data Set (UFDS), incorporated by this reference, or any automated systems subsequently developed to fulfill the Grantor's facility reporting requirements.
- F. The Grantee shall comply and require all their sub-Grantees or contractors to comply with the Drug and Alcohol Treatment Access Report (DATAR, a capacity management system) or any automated systems subsequently developed to fulfill the Grantor's capacity management reporting requirements.
- G. The information required within this Reporting Requirements section shall be submitted by the Grantee in accordance with the instructions issued by the Grantor.

## **XI. Remedies for Noncompliance**

- A. The Grantee shall comply and shall require that all sub-Grantees or contractors comply with all terms and conditions of this agreement and all pertinent State and federal statutes and regulations.
- B. If a Grantee materially fails to comply with any term or condition of the award, whether stated in a statute, regulation, assurance, certification, the Request for Applications, Application, Notice of Grant Award, or Terms and Conditions, the Grantor may take one or more of the following actions (as Grantor deems appropriate in the circumstances):
  - 1. temporarily withhold cash payments pending correction of the deficiency by the Grantee or more severe enforcement action by the Grantor;
  - 2. disallow (that is, deny both use of funds and matching credit, if applicable) all or part of the cost of the activity or action not in compliance;
  - 3. wholly or partly suspend or terminate the current award for the Grantee's program;
  - 4. withhold further awards for the Grantee's program; or
  - 5. take other remedies that may be legally available.
- C. Prior to taking remedial action, the Grantor and Grantee shall meet to discuss the issues and explore possible mutually agreeable resolutions.
- D. Costs of Grantee resulting from obligations incurred by the Grantee during a suspension or after termination of an award are not allowable unless the Grantor expressly authorizes them in the notice of suspension or termination.

## **XII. Disputes**

If the Grantee believes that there is a dispute or grievance between the Grantee and the Grantor arising out of or relating to this grant agreement, the Grantee shall first discuss and attempt to resolve the issue informally with the Grantor's representative. If the issue cannot be resolved at this level, the Grantee shall follow the following procedures: If the issue cannot be resolved informally with the Grantor's representative, the Grantee may submit, in writing, a grievance report together with any evidence to the California Department of Alcohol and Drug Programs, Office of Criminal

Justice and Collaboration (OCJC) Deputy Director. The grievance report must state the issues in the dispute and the legal authority, or other basis for the Grantee's position, and the remedy sought. Within ten (10) working days of receipt of the written grievance report from the Grantee, the OCJC Deputy Director shall make a decision in regard to the grievance report and issue a determination to Grantee and the reason(s) underlying the decision. Should the Grantee disagree with the OCJC Deputy Director's decision, the Grantee may appeal to the next level as provided in the following paragraph.

To appeal from the grievance determination, the Grantee must submit a letter of appeal to the Chief Deputy Director of the California Department of Alcohol and Drug Programs (ADP) explaining why the Deputy Director's decision is unacceptable. The letter must include, as an attachment, copies of the Grantee's original grievance report, evidence originally submitted, and the response from OCJC's Deputy Director. Grantee's letter of appeal must be submitted within ten (10) working days of the receipt of the Division Deputy Director's written decision. The Chief Deputy Director shall, within twenty (20) working days from receipt of the Grantee's letter of appeal, review the issues raised and shall render a written decision to the Grantee. The decision of the Chief Deputy Director shall be final.

### **XIII. Amendments of Terms and Conditions**

- A. The Grantor may amend these Terms and Conditions by providing written notice of the amendment to the Grantee 30 days prior to the implementation of the amendment.
- B. In the event of changes in law that affect provisions of this Grant, the parties agree to amend the affected provisions to conform to the changes in law retroactive to the effective date of such changes in law. The parties further agree that the terms of this Grant are severable and in the event of changes in law as described above, the unaffected provisions and obligations of this Grant will remain in full force and effect.

#### **XIV. Confidentiality of Information**

- A. The Grantee shall conform to and monitor compliance with all State and federal statutes and regulations regarding confidentiality, including, but not limited to, the confidentiality of information requirements at Part 2, Title 42, Code of Federal Regulations (CFR); Welfare and Institutions Code (W&IC), Section 14100.2; Section 11977, Division 10.5 of the Health and Safety Code (HSC); and Title 22, California Code of Regulations (CCR), Section 51009.
- B. The Grantee shall ensure that no list of persons receiving services under this Grant is published, disclosed, or used for any purpose except for the direct administration of this program or other uses authorized by law that are not in conflict with requirements for confidentiality contained in Title 42, CFR, Part 2; W&IC, Section 14100.2; HSC, Section 11977; and Title 22, CCR, Section 51009.

#### **XV. Certifications**

##### **Drug Free Work Place**

- A. By signing this Grant, the Grantee certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Work Place Act of 1990 (Gov. Code § 8350, et seq.), and will provide a drug-free work place by taking the following actions:
  - 1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's work place, and specifying the actions that will be taken against employees for violations of the prohibitions, as required by Government Code Sections 8355 and 8355 (a).
  - 2. Establish a drug-free awareness program as required by Gov. Code Section 8355 (b) to inform employees about all of the following:
    - (a) the dangers of drug abuse in the work place;
    - (b) the Grantee's policy of maintaining a drug-free work place;

- (c) any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d) the penalties that may be imposed upon employees for drug abuse violations.
- 3. Provide, as required by Gov. Code Section 8355 (c), that every employee engaged in the performance of the Grant:
  - (a) Be given a copy of the Grantee's drug-free policy statement; and
  - (b) As a condition of employment on the grant, (1) agree to abide by the terms of the statement and (2) for employees receiving federal funds, notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
- 4. **For federal funds**, notifying the Grantor within ten (10) calendar days after receiving notice under paragraph XV A. (3)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working.
- 5. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph XV A. (3)(b) with respect to any employee who is so convicted—
  - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement, or other appropriate agency;
- 6. Making a good-faith effort to continue to maintain a drug-free workplace through the implementation paragraphs XV A. through 5.



- B. Failure to comply with these requirements for a drug-free work place may result in suspension of payments under the grant, or termination of the grant, or both, and the Grantee may be subject to debarment from future grants if the Grantor determines that the Grantee has made false certification, or the Grantee has violated the certification by failing to carry out the requirements as noted above.

## **XVI. Lobbying Activities**

### **State**

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g. "grassroots") lobbying activities.

### **Federal**

As required by Title 31, USC, Section 1352, as the duly authorized representative of the Grantee, I certify, to the best of my knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, 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 in connection with the awarding of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, 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 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 Grantee will submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- C. The Grantee will require that the language of this certification be included in the award documents for all sub-contracts at all tiers (including sub-contracts, subgrants, and contracts under grants,

loans and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC, Section 1352. 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.

### **Program Fraud Civil Remedies Act**

I certify that the statements herein are true, complete, and accurate to the best of my knowledge, and that I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. I agree that the Grantee organization will comply with the terms and conditions of award.

### **Environmental Tobacco Smoke**

The Grantee agrees to comply with Public Law 103-227, also known as the Pro-Children Act of 1994 (20 USC § 6081, et seq.), which, in part, prohibits smoking within any portion of any indoor facility (enclosed structure) owned or leased or granted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by federal grant, grant, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities and are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for in-patient drug or alcohol treatment service providers whose sole source of applicable federal funds is Medicare or Medicaid, or facilities where the Women, Infants, and Children Program's coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this document, the authorized representative of the Grantee certifies that the applicant organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The Grantee agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly. Failure to comply with law may result in the imposition of a civil monetary penalty of up to \$1,000 per day.

## **XVII. Assurances**

As the duly authorized representative of the Grantee, I certify that the Grantee:

- A. Has the legal authority to apply for these funds and the institutional, managerial and financial capability to ensure proper planning, management and completion of the project described in the application.
- B. Will give the United States Department of Health and Human Services, the Comptroller General of the United States, the Department of Alcohol and Drug Programs, and if appropriate, the State auditor, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directive.
- C. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- D. Will initiate and complete the work within the applicable time frame after receipt of approval of the application.
- E. Will adopt and use proper methods of administering the programs/activities including:
  - 1. The enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program;
  - 2. The correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation; and
  - 3. The adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of programs.

- F. Will comply with all State requirements relating to nondiscrimination. During the performance of this agreement, Grantee and any sub-contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and sub-contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof, as if set forth in full. Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title IV of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 USC §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 USC §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 USC §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis drug use; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 USC §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) title VIII of the Civil Rights Act of 1968 (42 USC §3601 et seq.), as amended, relating to non-discrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provision in the specific statute(s) under which application for federal assistance is being made; and (j) the

requirements of any other nondiscrimination statute(s) which may apply to this grant.

Shall include the nondiscrimination and compliance provisions of this clause in all sub-contracts/subgrants to perform work under this Agreement.

Will post, and further will require its contractors, sub-contractors, or sub-Grantees to post, in conspicuous places, notices available to all employees and applicants for employment setting forth the provisions of the Equal Employment Opportunity Act [42 USC 2000(e)] in conformance with Federal Executive Order No. 11246.

Will not use State or federal funds, and further will require its contractors, sub-contractors, or subrecipients not to use such funds to provide direct, immediate or substantial support to any religious activity.

- G. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection to wetland pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 USC §§1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176 (c) of the Clear Air Act of 1955, as amend (42 USC §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- H. Will comply with the Wild and Scenic Rivers Act of 1968 (16 USC §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- I. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC §740), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC §§469a-1 et seq.).

- J. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 USC §§4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

**XVIII. No Unlawful Use or Unlawful Use Messages Regarding Alcohol and Other Drugs**

The Grantee agrees that information produced through these funds, which pertains to drug and alcohol-related programs, and/or clinics, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program and/or clinic. Additionally, no aspect of a drug or alcohol-related treatment program, and/or clinic, shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (HSC §11999 (b) and (d) through (h), et seq.). The Grantee agrees to enforce these requirements by signing this agreement.

**XIX. Hazardous Activities**

- A. The Grantee shall have liability insurance sufficient to cover hazardous activities pursuant to Section 7.40 of the State Contracting Manual.
- B. The Grantee shall maintain, at all times during the term of this Grant, insurance and bonding, for bodily injury and property damage liability combined, of not less than \$1 million per occurrence and shall otherwise comply with Section 7.40 of the State Contracting Manual.

**XX. Termination**

Either party may terminate this Grant Award by delivering written notice of termination to the other party at least 30 days prior to the effective date of termination. The notice shall state the effective date of and reason for the termination.

**Comprehensive Drug Court Implementation Program**

## **SPECIAL TERMS AND CONDITIONS for CDCI**

In addition to the Terms and Conditions that apply to both CDCI and PSSF Programs, these terms and conditions apply to the CDCI Program.

### **I. Term of Funding**

- A. State General Funds in the amount shown on the Notice of Grant Award (NGA) are granted for the term shown on the NGA.
- B. The Grantee may be awarded additional funds on an annual basis for a total award period of up to 60 consecutive months, provided funding is available; and the Grantor determines satisfactory performance in relation to the Comprehensive Drug Court Implementation Application submitted to the State (attached and incorporated into this agreement) and the statewide Evaluation (see Section V under Common Terms and Conditions). These funds may be awarded to the Grantee through a non-competitive grant renewal process.
- C. At the end of each project budget period, the Grantee may request a no-cost time extension for funds that were not expended during the project budget period.

The request for an extension of unexpended funds must be submitted to the Project Coordinator, in writing, by the Grantee, 30 days prior to the end of the project budget period. Unexpended funds are not automatically available for expenditure beyond the project budget period. The request shall include:

- 1. The reason the funds were not expended during the project budget period;
- 2. A revised budget that separately identifies both the funds to be extended and the funds to be awarded for the following project budget period;
- 3. A description of any changes in the goals, objectives, and/or tasks to be supported by the extension funds during the following project budget period; and
- 4. Signatures from the Grantee (both the County Alcohol and Drug Program Administrator and the Presiding Judge).

### **II. Record Keeping Requirements**

Accounting records and supporting documents shall be retained for a three-year period from the date the final payment is made. When an audit has been started before the expiration of the three-year period, the records shall be retained until completion of the audit and final resolution of all issues that arise as a result of the audit.

### **III. Audits**

- A. By accepting these grant funds, the Grantee agrees to participate in site visits and/or audits as requested by the Grantor.
- B. This Grant is subject to the examination and audit by the Grantor, or the Grantor's authorized representative(s), or by the California Bureau of State Audits for a period of three years from the date final payment is made pursuant to the Grant (Gov. Code § 10532). The Grantee must allow representatives of the Grantor access to records and staff as needed for monitoring activities and audits.



## **SPECIAL TERMS AND CONDITIONS for PSSF**

In addition to the Terms and Conditions that apply to both CDCI and PSSF Programs, these terms and conditions apply to the PSSF Program.

### **I. Authority**

- A. The source of funds is the Social Security Act, as amended, Title IV, Part B, Subpart 2; Omnibus Budget Reconciliation Act of 1993; Public Law 103-66; Social Security Amendments of 1994, Public Law 103-432; Adoption and Safe Families Act of 1997, Public Law 105-89; Promotion Safe and Stable Families Amendments of 2001, Public Law 107-133.
- B. The Catalog of Federal Domestic Assistance Number that applies to these funds is 93.556

### **II. Term of Funding**

- A. PSSF funds in the amount shown on the Notice of Grant Award (NGA) are granted beginning January 1, 2005, through December 28, 2005.
- B. These funds are time-limited. At least one-half of the PSSF funds identified on the NGA must be obligated by June 30, 2005, and at least one-half of the PSSF funds must be liquidated by September 30, 2005. Any amount less than one-half of the PSSF funds not obligated and liquidated within the established time period will not be available to the Grantee. All remaining funds in excess of one half of the PSSF award must be obligated and liquidated by December 28, 2005.
- C. The Grantee must submit claims and reports within the timeframes specified in this Agreement. Failure to submit claims and reports within the specified timeframes will result in such claims not being paid if the time for which such funds are available has expired.

### **III. Fiscal Terms and Conditions**

- A. This agreement will be subject to any additional restrictions, limitations, or conditions enacted by Congress or conditions that may affect the provision, terms, or funding of the agreement in any manner. If funds are not appropriated for this program, the agreement will be terminated and have no further force and effect.

- B. Use of these funds falls under the Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.
- C. As stated in Section 507 of Public Law 103-133, it is the sense of Congress that, to the extent practicable, all equipment and products purchased with funds made available in the Social Security Act should be American made.
- D. As stated in Section 508 of Public Law 103-133, all Grantees receiving federal funds including, but not limited to, State and local governments and recipients of federal research grants, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

#### **IV. Record Keeping Requirements**

All financial and programmatic records, supporting documents, statistical records, and other records must be maintained in accordance with Title 45, Code of Federal Regulations (45 CFR) 92.42.

#### **V. Audits**

- A. By accepting these grant funds, the Grantee is agreeing to participate in audits as requested by the State, or authorized federal agencies and representatives, and as required by OMB Circular A-133.
- B. The Grantee shall comply, and shall require that contractors, sub-Grantees, and sub-contractors comply, with all terms and conditions of this agreement and all pertinent State and federal statutes and regulations. The State, the Comptroller General of the United States, or other authorized federal agencies and representatives, will be allowed to evaluate the quality, appropriateness, and timeliness of services performed under this grant. Any and all financial and programmatic records, supporting documents, statistical records, and other records may be inspected and copied at any time during normal business hours. Unannounced visits may be made at the discretion of the State. Employees who might reasonably have information related to such

records may be interviewed. Further, the Grantee agrees to include a similar right of the State and authorized federal agencies and representatives, to audit records and interview staff in any contract, sub-grant, or sub-contract related to performance of this agreement.

## VI. Certifications

### **Debarment, Suspension, and Other Responsibility Matters**

The Grantee and sub recipients must not make any award or permit any award (sub-grant or contract) to be made with federal funds, at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs (45 CFR Part 76).

- A. As the duly authorized representative of the Grantee, I certify, to the best of my knowledge and belief, that neither the Grantee nor its principals:
1. is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  2. has not, within a three-year period preceding this application, been convicted of, or had an adverse civil judgment entered in connection with, fraud or other 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.
  3. is 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 above, and
  4. has not, within a three-year period preceding this application, had one or more public transactions (federal, State or local) terminated for cause or default.
- B. If the authorized representative of the Grantee is unable to certify to any of the statements in this certification, an explanation must be attached to this application.

- C. The Grantee agrees that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions" in all lower tier covered transaction (i.e., sub-contracts/sub-grants for financial assistance and sub-contracts for goods and services) in accordance with 45 CFR Part 76. This clause reads: "(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal."

## VII. Assurances

As the duly authorized representative of the applicant, I certify that the Grantee:

- A. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- B. will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- C. Will comply with the Intergovernmental Personnel Act of 1970 (42 USC §§4728-4763) relating to prescribed standards for merit systems for programs funded under any of the nineteen statutes or regulations specified in Appendix A of OPM's Standard for a Merit System of Personnel Administration (5 CFR 900, Subpart F).
- D. Will use funds received under this grant program will be used to supplement, not supplant, non-federal funds.
- E. Will comply with the provisions of the Hatch Act (5 USC §§ 1501-1508), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

- F. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 USC §§ 276z to 276a-7), the Copeland Act (40 USC §276 c, and 18 USC §874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally assisted construction sub agreements.
- G. Will comply, if applicable, with flood insurance purchase requirements of Section 102 (a) of the Flood Disaster protection Act of 1973 (P.L. 93-234), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of the insurable construction and acquisition is \$10,000 or more.
- H. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- I. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

**VIII. Health and Human Services Regulations; General Accounting Office Hotline**

- A. The following Department of Health and Human Services (HHS) Regulations, codified in Title 45 of the Code of Federal Regulations (CFR) are applicable:
  - Part 74 - Administration of grants for institutions of higher education, hospitals, and other non-profit organizations, and commercial organizations.
  - Part 75 - Government-wide Debarment and suspension (non-procurement) and Government-wide Requirements for Drug-Free Workplace (grants)
  - Part 80 - Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
  - Part 81 - Practice and Procedures for Hearings under Part 80 of Title 45 CFR

- Part 84 - Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
- Part 91 - Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance
- Part 92 - As applicable, administration of Grants for State and local governments
- Part 93 - New Restrictions on Lobbying
- Part 95 - General Administration – Grant Programs (Public Assistance and Medical Assistance), except Subpart A, Time Limits for States to File Claims (does not apply)
- Part 1355 - General
- Part 1357 - Requirements Applicable to Title IV –B

(Parts 74, 92, 1355, and 1357 contain administrative and other requirements applicable to these funds.)

- B. The United States General Accounting Office maintains a toll-free telephone number (800-424-5454) for receiving information concerning fraud, waste or abuse under grants and cooperative agreements. Such reports are kept confidential, and callers may decline to give their names if they choose to remain anonymous.

**EXHIBIT B**  
**HIPAA Business Associate Agreement**

This HIPAA Business Associate Agreement supplements and 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 have entered into the Underlying Agreement pursuant to which Contractor will provide services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

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

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

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

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

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

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of County Disclosed PHI.
  - A. Contractor shall be permitted to use PHI disclosed to it by the County:
    - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County.
    - (2) as necessary to perform any and all of its obligations under the Underlying Agreement.
  - B. Unless otherwise limited herein, in addition to any other uses and/or

disclosures permitted or authorized by this Business Associate Agreement or Required by Law, Contractor may:

- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
- (2) disclose the PHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:
  - (a) The disclosure is Required by Law; or
  - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
    - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
    - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
- (4) not disclose PHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
- (5) de-identify any and all PHI of County received by Contractor under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule and does not preclude timely payment and/or claims processing and receipt.

C. Contractor agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as Required by Law, or as otherwise permitted by law.

3. Obligations of Contractor. In connection with its use of PHI disclosed by County to Contractor, Contractor agrees to:



- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
  - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
  - C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Business Associate Agreement.
  - D. Report to County any use or disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware.
  - E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Business Associate Agreement.
  - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.
  - G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
4. PHI Access, Amendment and Disclosure Accounting. Contractor agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
  - B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).

- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
  - E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
  - F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.
  - G. Not make any disclosure of PHI that County would be prohibited from making.
5. Obligations of County.
- A. County agrees that it will make its best effort to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - B. County agrees that it will make its best effort to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - C. County agrees that it will make its best effort to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI.
  - D. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
  - E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that Contractor can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.
6. Term and Termination. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein.

7. HIPAA Business Associate Indemnity.

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Business Associate Agreement. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

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

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule 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 and HIPAA generally.