

**New Morning Youth & Family Services  
Emergency Shelter Care**

**AGREEMENT FOR SERVICES #6178**

**THIS AGREEMENT** made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and New Morning Youth & Family Services, Inc.; a California non-profit public benefit corporation qualified as a tax exempt organization under Title 26 Code of Federal Regulations, Section 501 (c)(3) of the Internal Revenue Code of 1986; whose principal place of business is 6765 Green Valley Road, Placerville CA 95667, (hereinafter referred to as "Contractor");

**R E C I T A L S**

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide emergency shelter/foster care services on an "as requested" basis for Clients referred by the County of El Dorado Probation Department; and

**WHEREAS**, County desires and has the duty to provide protection in the form of emergency shelter/foster care for youth in the juvenile justice system who have been ordered to foster care by the Superior Court (hereinafter referred to as "Client" or "youth"), and whom County takes or accepts into its charge to ensure their safety and well-being pursuant to the provisions of the California Welfare and Institutions Code ("WIC") Section 625, 626(b), 725, 727 and 16500 et seq.; and

**WHEREAS**, Contractor has represented to County that it is specially trained, experienced, expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State (all references to "State" in this Agreement shall mean the State of California unless otherwise specified), and local laws; and

**WHEREAS**, County has determined that the provision of such services provided by Contractor are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

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

## ARTICLE I

**Scope of Work:** Contractor is engaged in the business of doing the services and tasks required under this Agreement, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Contractor agrees to furnish, at Contractor's own cost and expense, all personnel, equipment, tools, materials, and services necessary to perform the services and tasks required under this Agreement, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Contractor shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Contractor is responsible for ensuring that its employees, as well as any subcontractor, if applicable, perform the services and tasks required under this Agreement accordingly.

Contractor shall provide personnel and services necessary to provide emergency shelter care and associated services which may include therapeutic counseling, psychotherapy, and related services (service) on an "as requested" basis to Clients referred by County's Probation Department (Probation).

### A. Professional License Requirements:

1. Therapeutic counseling services shall be provided by a currently Licensed Clinical Social Worker (LCSW), licensed Marriage and Family Therapist (MFT), Licensed Professional Clinical Counselor (LPCC) or Psychologist whose license has been issued and is regulated by the State of California, or as amended by California Department of Consumer Affairs, Board of Behavioral Sciences. Certified and Registered Counselors also may provide substance abuse counseling services, per California Code of Regulations Title 9, Chapter 8, Section 13000 et seq. Said license(s) must be considered clear, i.e., license renewal fees have been paid, continuing education requirements (if applicable) have been met, and there have been no actions or revocations placed against it by the State licensing or certifying agency.
  - a. The California Department of Consumer Affairs, Board of Behavioral Sciences and the California Department of Consumer Affairs, Board of Psychology do not have reciprocity with any other state licensing board. Therefore, any LCSW, MFT, LPCC, or Psychologist who is providing Probation approved services to a Client who is receiving services outside California must have a current, clear license issued and regulated by the appropriate certifying agency for the state in which they are practicing.
  - b. Counselors who are Certified, Registered, or Licensed in other States must comply with California Code of Regulations Title 9, Chapter 8, Section 13030 regarding reciprocity.
  - c. Contractor shall notify County within five (5) business days of any pending Federal, State, County, City, or licensing or governing agency investigations or investigation findings, disciplinary actions, or administrative actions found against Contractor or

Contractor's employees' professional license(s). This includes but is not limited to formal accusations, citations, revocations, suspensions, stayed revocations or suspensions, probation, voluntary or mandatory surrender of license, or formal public reprimand.

- i. Within five (5) business days of formal accusations, citations, revocations, suspensions, stayed revocations or suspensions, probation, voluntary or mandatory surrender of license, or formal public reprimand, Contractor shall provide County with copies of Court accusations and/or dispositions relating to Contractor or Contractor's employee's license.
  - ii. Contractor shall provide initial and ongoing proof of compliance with probationary stipulations.
2. Interns: Effective January 1, 2018, in accordance with Business and Professions Code, Section 4980.09, "interns" shall be called "associates." If any service is delegated to an intern or associate (including, but not limited to Associate Marriage and Family Therapist, Registered Associate Marriage and Family Therapist, Associate Professional Clinical Counselor, or Registered Associate Professional Clinical Counselor), the intern or associate must be pre-licensed by the appropriate certifying state agency and all service assignments must be under the direct supervision of a currently licensed Psychologist, Psychiatrist, Licensed Clinical Social Worker, Licensed Professional Clinical Counselor, or Marriage and Family Therapist as described above. No intern or associate shall be the sole author of any written initial visit report or any other report that pertains to Client or Client's treatment plan. All Client-related documents must be reviewed, approved, and signed by said licensed Psychologist, Psychiatrist, LCSW, LPCC, or MFT.

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

1. Emergency Shelter Care (ESC) Services - Upon request by County, ESC shall be provided for short-term, temporary placement ensuring that the physical and emotional safety of the Client is addressed to provide trauma-informed care. Clients shall be furnished with room and board, care and supervision, clothing, personal incidentals, recreation, transportation, education, social services, nurturing, care, therapeutic counseling services, medical and/or psychological treatment, supervised visitations, trainings, etc. in order to comply with court ordered services, or as determined by Client's Probation Officer to be suited to meet Client's needs.

Responsibility of County:

- a. Share all pertinent information about Client, including relevant social, medical, and educational history, juvenile justice involvement/history, behavior problems, court involvement, parental, sibling and family member(s) or relative visitation plans, and other specific characteristics of Client with Contractor before placement, and shall share additional information when obtained. When initially placing a Client with Contractor, the Probation Department shall provide to Contractor:

- i. Prescribed medications for the Client that are in the possession of the Probation Department, with instructions for the use of the medication,
  - ii. Information regarding any treatments that are known to the Probation Department and that are in effect for the Client at the time of the placement,
  - iii. Known available existing issues relevant to the Client that may jeopardize the health and safety of the Client or alter the manner in which foster care should be administered,
  - iv. Behavioral issues which may affect the care and supervision of the Client,
  - v. Known or suspected dangerous behaviors including violence or (alleged) sexual offense(s),
  - vi. History of physical, medical, emotional, or sexual abuse known to the Probation Department,
  - vii. Special medical and/or behavioral needs of the Client and identification of all current medications that have been prescribed for the Client,
  - viii. Past and current infections and diseases of the Client relative to the placement, Educational and past existing medical records (e.g. immunizations),
  - ix. Educational status and past existing medical records (e.g. immunizations), and
  - x. Expectations regarding the care of Client, such as meeting medical needs and special needs including but not limited to psychological needs, separation/loss issues, etc.
- b. Provide Medi-Cal cards or proof of other medical coverage for Client at the time of placement or as soon thereafter as possible.
  - c. Provide necessary placement paperwork at the time of placement of the Client to include but not be limited to the consent for medical treatment, personal rights, and the agency-group home agreement.
  - d. Work with Contractor toward development of a treatment plan for Client.
  - e. Provide assistance with emergencies as they pertain to Client.
  - f. Assist in the maintenance of Client's constructive relationships with parents, family member(s), or relatives and involve parents in future planning for Client.
  - g. Work with Contractor toward termination of Client's placement with Contractor. Probation preference is to limit the length of stay of Client with Contractor to less than seven (7) days; however, due to court proceedings and other scheduling factors, Probation may extend the length of stay of the Client beyond the 7-day placement with written authorization.

Responsibility of Contractor:

- a. Within 24 hours of Client's placement, the Contractor will complete a safety plan with each Client, part of a Trauma Informed Care (TIC) approach recognizes that youth respond to placement and changes in their environment and care providers in unique ways. Identifying triggers for each Client, at the start, increase the Client's ability to tolerate the change and decreases potential for stress reactions. In addition, this allows care providers to tailor interactions specifically for each Client.
- b. Contractor shall have and maintain during the term of this Contract, a valid group home

license issued by the CDSS, CCLD or a Resource Family Approval issued by the County, and shall conform to all applicable regulations, foster care standards, and the Written Directives as established by CDSS, CCLD, and DCFS.

- c. Contractor shall be in good standing with CDSS, CCLD and Probation Department and shall not be on “Do Not Refer,” “Do Not Use,” or “Investigative Hold.”
- d. The Contractor’s program shall serve children age 6 – 17, non-minor dependents (NMDs), as appropriate, and pregnant and parenting teens and their children. (Children under the age of 5 will only be served if they are being cared for by their minor/NMD parent who is also being cared for at the shelter.)
- e. Contractor shall: (1) welcome and accept Clients referred by Probation 24 hours per day, 7 days per week, including weekends and holidays; and (2) provide Clients a temporary home with a bed, meals, and general care for their protection and comfort.
- f. For stays longer than seven (7) days, Contractor must obtain Probation Department Supervisor (Supervising Deputy Probation Officer) or higher (Deputy Chief Probation Officer, Superintendent, or Chief Probation Officer) approval.
- g. Work toward termination of placement, on a planned basis, with maximum involvement of Contractor’s staff, Client, parents, and County. Never use corporal punishment, deprivation of meals, deprivation of monetary allowance, threat of cancellation of visits from parents, threat of cancellation of home visits, threat of removal, or any type of degrading or humiliating punishment as a means of discipline. Any form of discipline that violates Client's personal or civil rights shall also be strictly prohibited. Any such forms of discipline shall not be tolerated. In all instances and without exception, the use of constructive, alternative methods to destructive discipline shall be used.
- h. Participate in all multidisciplinary team meetings (“MDT”) or Child and Family Team meetings (“CFT”) as requested by the Client and/or the Probation Officer. Attendance shall be in-person or by teleconference. For the purposes of this agreement, “teleconference” means a meeting, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Attendance of meetings shall not be billed separately from the ESC fee.
- i. Immediately notify the Client’s Probation Officer by telephone of any significant changes in Client’s health, behavior, or location, and provide a follow-up written incident report within twenty-four (24) hours. For after-hour emergency notification, contact the Juvenile Treatment Center, the 24-hour detention facility in South Lake Tahoe operated by the Probation Department.
- j. Contractor shall adhere to providing services, in compliance with the “Foster Youth Bill of Rights” as written by The California Youth Connection. Any restrictions on the rights of each individual Client must be approved a Probation Department Supervisor (Supervising Deputy Probation Officer) or higher (Deputy Chief Probation Officer, Superintendent, or Chief Probation Officer) on a case-by- case basis. These rights include the following:

A. “Foster Youth Bill of Rights.” The right to be treated with respect.

1. The facility shall ensure that the resident and his/her authorized representative(s) are offered the opportunity to participate in the development of the needs and service plan. CCR 84068.2(d)
2. Facilities shall ensure that privacy rights of residents are respected, individual privacy shall be provided in all toilet, bath, shower, and dressing areas. CCR 84088(b)(4)
3. Staff shall treat residents with respect and shall be prohibited from humiliating, intimidating, ridiculing, coercing or threatening residents. CCR 80072 (a)(3)
4. Access to bathrooms shall not be unreasonably limited during waking or sleeping hours.
5. Residents shall have the right to be free to attend religious services and activities of their choice. Attendance at religious services, in or out of the facility, shall be on a completely voluntary basis. CCR 80072 (a)(5)(A)
6. Residents shall have the right to have visitors visit privately during waking hours without prior notice, provided that such visitations are not prohibited by the resident’s needs and services plan; do not infringe upon the rights of other residents; do not disrupt planned activities, and are not prohibited by court order or by the resident’s authorized representative(s). CCR 84072(b)(5)

B. The right to adequate living conditions.

1. The home must meet licensing standards.
2. Residents shall have the right to privacy in their own rooms and shall not be prohibited from closing the doors to their rooms absent specific concerns for the safety of the resident.
3. Residents shall be allowed to possess and use their own toilet articles. CCR 84072(b)(7)
4. Residents shall have access to individual storage space for their private use.
5. Residents shall possess and use their own personal items unless prohibited as part of a discipline program. CCR 84072(b)(9)
6. Residents shall be provided with adequate food pursuant to 80076, including between meal nourishment or snacks. CCR 80076(a)(4)
7. Residents who require special diets including vegetarian diets, religious diets or diets based on health needs shall be provided with appropriate food.
8. Residents shall not be required to perform chores which are beyond the scope of expectations as outlined in the house rules or discipline information reviewed at placement by the County worker and resident except on a voluntary basis and for compensation.

C. The right to adequate voluntary medical, dental, and psychiatric care.

1. Non-resident staff shall not make medical decisions about the severity of an illness or injury or screen resident requests for medical attention without consultation with a physician, a nurse or a trained health practitioner.
2. Psychotropic medications shall not be administered without parental consent, court order or compliance with court policy for administration of psychotropic medications.
3. Facility staff shall respect the confidentiality of residents' medical or psychiatric treatment. Information about these treatments shall not be generally available to staff.
4. Residents have the right to a second opinion if requested before being required to undergo intrusive medical, dental or psychiatric procedures provided there is a resource for payment such as private insurance coverage for the resident Medi-Cal authorization, etc.
5. Residents have the right to contact their County social worker regarding receiving or rejecting medical care or health related services. CCR 80072(a)(9)

- k. Arrange for the collection and storage of Client's personal belongings at termination of placement. When Client is discharged, Contractor shall ensure that Client's clothing and personal belongings accompany Client to the next placement. If Client runs away and after Contractor has immediately notified the Client's Probation Officer, Contractor shall gather together Client's personal belongings, alert Client's Probation Officer that such belongings are at Contractor's facility and, if County does not immediately collect the belongings, shall store them at no charge to County for up to fourteen (14) days from the date of notification to County of Contractor's possession of Client's personal belongings. After 14 days, Contractor shall contact and inform County that the belongings shall be mailed to County at County's expense unless an alternate plan is mutually agreed upon.

The Probation Department has established the following priorities for foster youth in its care: (1) Safety, (2) Permanency, and (3) Access to effective and caring services for Well-Being. ESC with Contractor is a time-limited placement of up to 7 days; therefore, the Permanency factor is not measured.

Services shall only be provided following approval via signed Probation Authorization.

Reports:

Contractor shall provide written reports, including but not limited to the following:

Emergency Shelter Care Reports: As needed, incident report regarding any significant changes in Client's health, behavior, or location.

Reports shall be sent as follows, or as otherwise directed in writing by County:

<b><i>Please Send Reports to:</i></b>
County of El Dorado Probation Department Attn: Foster Care/Placement Supervisor 3974 Durock Rd, Suite 205 Shingle Springs CA 95682

C. Probation Authorizations for Service(s):

1. Prior to providing any service(s) to any Client(s) detailed under “Scope of Services” or “Compensation for Services,” Contractor shall obtain Probation Authorization that has been signed by the appropriate Probation staff.
2. Prior to providing any Client service(s) NOT detailed under “Scope of Services” or “Compensation for Services,” Contractor shall obtain Probation Authorization that has been signed by the appropriate Probation staff.
3. County shall not pay for any services that have not been pre-approved by Probation Authorization, incomplete or unsatisfactory services, “no shows,” cancellations, or telephone calls. Contractor also shall not be compensated for services provided to Client outside of the authorized service dates identified on said Probation Authorization. A copy of the Authorization shall be included with the invoice containing the service it pertains to and both documents shall be submitted to Probation at the address indicated in the Article titled, “Compensation for Services.” Failure to submit a copy of the Probation Authorization with Contractor’s invoice may result in payment being withheld until said Authorization is submitted. Probation Department Management reserves the right to review and approve for reimbursement, on a case-by-case basis, service(s) not explicitly addressed under “Scope of Services” or “Compensation for Services.”

**ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by all parties hereto and shall expire three (3) years from the date thereof, unless terminated earlier pursuant to the provisions contained herein this Agreement under the Article(s) titled, "Default, Termination, and Cancellation" or "Fiscal Considerations."

**ARTICLE III**

**Compensation for Services:** Services shall be billed using the County negotiated rate structure for Emergency Shelter Care services.

<i>Service</i>	<i>Rate</i>
<p><b><i>Emergency Shelter Care (ESC). Up to seven (7) days upon written request via Probation Authorization. ESC is all inclusive. All services including attendance at meetings.</i></b>  <i>Services in excess of 7 day stay require additional Probation Authorization.</i></p>	<p>County Negotiated Rate for ESC            \$353/day/Client*</p> <p>*(No charge for child age 0-5 in care of Client)</p>



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

For services provided herein, including any deliverables that may be identified herein, County agrees to pay Contractor upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

The total amount of this Agreement shall not exceed \$200,000, inclusive of all costs, taxes, and expenses.

Probation Authorizations or other written authorizations for services shall be attached to invoices. Only the name(s) of Clients listed on the Probation Authorization shall be listed on the invoice. Contractor shall ensure that only billing information is included on the invoice. **Information related to Client(s) diagnosis, prognosis, or treatment is not permitted on the invoice.**

Contractor is required to submit invoices with a copy of the Authorization, no later than fifteen (15) days following the end of a "service month." For billing purposes, a "service month" shall be defined as a calendar month during which Contractor provides Client services in accordance with "Scope of Services." Failure to submit invoices and Authorizations by the 15th of the month following the end of a service month shall result in payment(s) being withheld until the appropriate documents are received by staff. Receipt by Probation of invoices and associated paperwork submitted by Contractor for payment shall not be deemed evidence of allowable costs under this Agreement. Upon request by County, Contractor may be required to submit additional or new information, which may delay reimbursement. Invoices shall be sent as follows, or as otherwise directed in writing by County:

<b>Email (preferred method):</b>	<b>U.S. Mail:</b>
<p><u><a href="mailto:PB-Fiscal-M@edcgov.us">PB-Fiscal-M@edcgov.us</a></u></p> <p>Please include in the subject line: "Contract #, Service Month, Description / Program</p>	<p>County of El Dorado Probation Department Attn: Fiscal Unit 3974 Durock Rd, Suite 205 Shingle Springs CA 95682</p>

For emailed invoices, confirmation of receipt will be emailed back to you. If you do not receive confirmation, please resend or contact your Accounts Payable contact.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices.

In the event that Contractor fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XII, Default, Termination, and Cancellation, herein.

#### **ARTICLE IV**

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

#### **ARTICLE V**

**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 VI**

**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 understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

#### **ARTICLE VII**

**Confidentiality:** Contractor shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Contractor, and all Contractor's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Probation Department for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

#### **ARTICLE VIII**

**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 IX**

**Independent Contractor:** The parties intend that an independent contractor relationship will be created by this contract. 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 the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results. Contractor understands and agrees that Contractor lacks the authority to bind County or incur any obligations on behalf of County.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

## **ARTICLE X**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, 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 County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XI**

**Audit by California State Auditor:** Contractor acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

## **ARTICLE XII**

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

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
  2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. 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.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Contractor shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Contractor, the excess costs to procure from an alternate source.
2. County shall pay Contractor the sum due to Contractor under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.
3. County may require Contractor to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
  2. A representation or warranty made by Contractor in this Agreement proves to have been false or misleading in any respect.
  3. Contractor fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
  4. A violation of ARTICLE XIX, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement immediately 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, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Contractor, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

**ARTICLE XIII**

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

To County:

County of El Dorado  
 Probation Department  
 3974 Durock Rd, Suite 205  
 Shingle Springs CA 95682

Attn: Karla Kowalski  
 Deputy Chief Probation Officer

With a copy to:

County of El Dorado  
 Chief Administrative Office  
 330 Fair Lane  
 Placerville California 95667

Attn: Michele Weimer  
 Procurement and Contracts Manager

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

New Morning Youth & Family Services, Inc.  
6765 Green Valley Rd  
Placerville CA 95667

Attn: Executive Director, or Successor

or to such other location as Contractor directs.

#### **ARTICLE XIV**

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

#### **ARTICLE XV**

**Indemnity:** To the fullest extent permitted by law, Contractor shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XVI**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Contractor in performance of the Agreement.

- D. In the event Contractor is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Contractor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's 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 herein 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 Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement 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, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Contractor's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.

- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the 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. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

#### **ARTICLE XVII**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

#### **ARTICLE XVIII**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

#### **ARTICLE XIX**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Contractor and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with



County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Contractor covenants that during the term of this Agreement neither it, or any officer or employee of Contractor, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Contractor becomes aware of a conflict of interest related to this Agreement, Contractor shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in Article XII, Default, Termination, or Cancellation.

## **ARTICLE XX**

### **Nondiscrimination:**

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.

- C. Contractor's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

#### **ARTICLE XXI**

**California Residency (Form 590):** If Contractor is a California resident, Contractor must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### **ARTICLE XXII**

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

#### **ARTICLE XXIII**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXIV**

**Licenses:** Contractor hereby represents and warrants that Contractor and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

#### **ARTICLE XXV**

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

#### **ARTICLE XXVI**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Karla Kowalski, Deputy Chief Probation Officer, Probation Department, or successor.

## **ARTICLE XXVII**

**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 the obligations set forth herein.

## **ARTICLE XXVIII**

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

## **ARTICLE XXIX**

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

## **ARTICLE XXX**

### **Additional Terms and Conditions:**

- A. Mandated Reporter Requirements:** Contractor acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as "The Child Abuse and Neglect Reporting Act," and the Welfare and Institutions Code Section 15630 et seq., related to elder and dependent adults, as applicable.
- B. HIPAA Compliance:** As a condition of Contractor performing services for the County of El Dorado, Contractor agrees to fully comply with all terms and conditions of County's Business Associate Agreement, attached hereto as Exhibit A (incorporated herein and made by reference a part hereof).
- C. Confidentiality and Information Security Provisions:** Contractor shall comply with applicable Federal, State, and local laws and regulations, including but not limited to the Code of Federal Regulations Title 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII).

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

- 1. Permitted Uses and Disclosures of PU by Contractor.
  - a. Permitted Uses and Disclosures. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities.

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

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

2. Responsibilities of Contractor.

a. Contractor agrees to safeguards:

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

any breach of PII or data, where the information or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two business days of discovery, at (530) 621-5852. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.

**D. Access to Records:** The Contractor shall provide access to the federal, state or local Contractor agency, the Controller General of the United States, or any of their duly authorized federal, state or local representatives to any books, documents, papers and records of the Contractor which are directly pertinent to this specific Agreement for the purpose of making an audit, examination, excerpts and transcriptions.

**E. Compliance with All Federal, State, and Local Laws and Regulations:** Contractor shall comply with all federal, state and local laws including, but not limited to, the Americans with Disabilities Act (ADA) of 1990 (42 USC 12101 et. seq.) and California Government Code Sections 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Contractor shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Contractor from the County Health and Human Services Agency.

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

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

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

1. Are not presently debarred, suspended, proposed for debarment, declares ineligible, or voluntarily excluded by any federal department or agency.

2. Have not within a three (3)-year period preceding this application/proposal/Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in the above Paragraph B.
4. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.
5. Shall not knowingly enter in to any lower tier or subrecipient covered transaction with any person(s) who are proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4) or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the state.
6. Shall include a clause titled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or subrecipient covered transactions in accordance with 45 CFR Part 76.

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

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

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

**G. Assurance of Compliance:** Assurance of compliance with the County of El Dorado Health and Human Services Agency nondiscrimination in State and Federally assisted programs requirements as follows:

Contractor hereby agrees that they shall comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended, and in particular Section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and O); California Government Code section 4450; Title 22, California Code of Regulations section 98000 - 98413;

Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable Federal and State laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) .Parts 80, 84 and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall, because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed, or political belief, be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving Federal or State financial assistance; and hereby give assurance that it shall immediately take any measures necessary to effectuate this Agreement.

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

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

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

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

- H. Accounting Systems and Financial Records:** Contractor shall be required to establish and maintain accounting systems and financial records that accurately account for and reflect all federal funds received, including all matching funds from the State, County and any other local or private organizations. Contractor's records shall reflect the expenditure and accounting of said funds in accordance with all State laws and procedures for expending and accounting for all funds and receivables, as well as meet the financial management standards in 45 CFR Part 92 and in the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." More particularly, Contractors are responsible for complying with the

Uniform Grants Guidance and 45 CFR Part 92, and the allowability of the costs covered therein. Contractor must obtain written approval from a member of the Probation Executive Management prior to the expenditure of any "special" or unusual costs in order to avoid possible disallowances or disputes based on any potential unreasonableness or unallowability of expenditures as detailed under the specific cost principles of the Uniform Grants Guidance. In order to obtain the most current regulations, the user should consult not only the latest version of the CFR, but also the List of (CFR) Sections Affected (LSA) issued in the current month. The Federal Register home page offers links to both the Federal Register and the CFR. Electronic CFR (e-CFR) versions are available online via the U.S. Government Printing Office (GPO) website. Please note that documents on e-CFR, although updated daily, are unofficial editorial compilations of CFR material and Federal Register amendments and on-line versions may not be the most current version available.

- I. Annual Audit:** Pursuant to the Office of Management and Budget Uniform Grants Guidance, any entity that receives federal funds, as stated in the Uniform Grants Guidance, for the purposes of carrying out federal programs, must complete an annual audit. The funding threshold is aggregate funds from all sources. If requested by County, Contractor shall mail a certified copy of said completed annual audit to County's Health and Human Services Agency at the address listed in Agreement's "Notice to Parties" Article within thirty (30) days of Contractor's receipt of same. All adverse audit findings must be documented and included with completed annual audit. Certified evidence of correction(s) of adverse audit findings shall be provided to County at the Probation address listed in Agreement's Article titled "Notice to Parties."
- J. Lobbying Certification:** The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:
1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 "Disclosure of Lobbying Activities" in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or



entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

**M. Drug-Free Workplace:** Contractor agrees to maintain a drug-free workplace and remain in compliance with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. Chapter 10) and the California Drug-Free Workplace Act of 2000 (Government Code Section 8350 et seq.) and any subsequent amendments to either Act thereto. A "drug free workplace" means the site(s) for the performance of work done by Contractor at which Contractor and employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of any controlled substance. A list of controlled substances can be found in Schedules I through V of Section 202 of the Controlled Substances Act (21U.S.C. 812) and as further defined in Regulation 21 Code of Federal Regulations (CFR) 1308.11-1308.15.

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

1. Each applicant for paid or volunteer employment by Contractor who shall or may have a supervisory or disciplinary power over a minor or any person under his or her care shall be fingerprinted in order to determine whether they have a criminal history, which would compromise the safety of such minor, or person(s) under his or her care.

All fingerprinting shall be at Contractor's sole expense.

2. The fingerprinting process as set forth above shall be completed and the results of the process shall be obtained before any of the Contractor's employees, subcontractors, assignees or volunteers are assigned or permitted to work with any minor or person referred to Contractor by County. Alternatively, the Contractor may set a hire date prior to obtaining fingerprinting results contingent on the applicant certifying that: (1) his or her employment application truthfully and completely discloses whether he or she has ever been convicted of a felony or misdemeanor or been on parole or probation and (2) that the applicant understands that a background check shall be conducted and that he or she shall be immediately dismissed from employment if he or she has failed to provide information regarding convictions, has provided incomplete information regarding convictions, has omitted information regarding convictions or if the fingerprinting results reveal any conviction incompatible with employment with Contractor.
3. Contractor shall maintain, and make immediately available to County upon request, a written fingerprint certification for each employee, volunteer or applicant for paid or volunteer employment for whom fingerprinting is required as detailed above. Such certification shall state that the individual has been fingerprinted, shall provide the date of said fingerprinting, and shall state whether the process has disclosed any criminal history of the individual, which may compromise the safety of minors or other persons with whom that individual has contact. Fingerprint information received from Department of Justice (DOJ) by Contractor shall be retained or disposed of pursuant to current DOJ directives.

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

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

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

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

shall promptly advise Contractor which records are to be transferred to the custody of County. Contractor shall properly destroy records not transferred to custody of County, and Contractor shall provide documentation of proper destruction of all such records to County.

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

**ARTICLE XXXI**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

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**ARTICLE XXXII**

**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 executed this Agreement on the dates indicated below.

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

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

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

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

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

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

**-- NEW MORNING YOUTH & FAMILY SERVICES --**

By: \_\_\_\_\_  
Victor Antonio  
Executive Director  
"Contractor"

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

By: \_\_\_\_\_  
Name  
Corporate Secretary

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

**Exhibit “A”**  
**HIPAA Business Associate Agreement**

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

**RECITALS**

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

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

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

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

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

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

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

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

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by BA of County Disclosed PHI
  - A. BA shall not disclose PHI except for the purposes of performing BA’s obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.

- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
  - (3) disclose PHI as necessary for BA's operations only if:
    - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
      - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
      - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
  - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
  - (5) not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
  - (6) de-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

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

- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
- B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and

appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.

- D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.

4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
  - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
  - (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
- D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary"), BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County

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

6. Term and Termination

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
  - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
  - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination
  - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the



return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively “County”) from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA’s performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA’s indemnification of County as set forth herein. BA’s obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA’s expense, for the defense or settlement thereof. BA’s obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA’s obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

- 8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

9. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.