

# AGREEMENT FOR SERVICES

#501-PHD0106

*with*

**The SPHERE Institute**

*for*

**Evaluation of “El Dorado County Safety Net Technology Project /  
ACCESS El Dorado” AHRQ Grant**

**THIS AGREEMENT** made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and The SPHERE Institute, a California non-profit corporation and policy research firm, whose principal place of business is 500 Airport Boulevard, Suite 340, Burlingame CA 94010; (hereinafter referred to as "Contractor");

## WITNESSETH

**WHEREAS**, County requires a project evaluation as part of the grant requirements for the El Dorado County Safety Net Technology Project/ACCESS El Dorado, funded by the Agency for Healthcare Research and Quality (AHRQ) Transforming Healthcare Quality through Information Technology program on behalf of the El Dorado County Public Health Department and its clients; and

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

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

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

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

## **ARTICLE I - SCOPE OF SERVICES**

Contractor agrees to conduct the evaluation of the El Dorado County Safety Net Technology Project/ACCESS El Dorado activities funded through the AHRQ HIT implementation grant. This evaluation will include process and outcomes analysis, resulting in four major deliverables:

- An Evaluation Plan to be submitted to AHRQ no later than 1/30/2006
- Three annual evaluation reports documenting the effectiveness of the El Dorado County activities under this grant, as set forth in the Evaluation Plan. A draft of the annual evaluation report will be submitted to the County at least 6 weeks before the submission date to AHRQ for review and comment before the completion of the final report.

In addition to these deliverables and all activities required for their completion, Contractor will participate in monthly conference calls with project staff, meet in person on at least a quarterly basis to keep project staff apprised of evaluation activities, and submit a written interim progress report by May 31 in each year of the contract.

## **ARTICLE II - TERM**

This agreement is effective upon full execution by the parties and shall remain in effect through December 31, 2008. Either party may terminate this Agreement upon thirty (30) days written notice to the other.

## **ARTICLE III - COMPENSATION FOR SERVICES**

For services as described herein, County shall pay Contractor a total of \$110,000, inclusive of all expenses. Compensation shall be paid according to the following schedule, based on satisfactory completion of each deliverable:

Payment 1:	On execution or submission of the Evaluation Plan to AHRQ, whichever is later:	\$5,000
Payment 2:	On delivery of the Interim Progress Report 1:	\$5,000
Payment 3:	On delivery of the Draft Year 1 Evaluation Report:	\$20,000
Payment 4:	On delivery of the Final Year 1 Evaluation Report:	\$10,000
Payment 5:	On delivery of the Interim Progress Report 2:	\$5,000
Payment 6:	On delivery of the Draft Year 2 Evaluation Report:	\$20,000
Payment 7:	On delivery of the Final Year 2 Evaluation Report:	\$10,000
Payment 8:	On delivery of the Interim Progress Report 3:	\$5,000
Payment 9:	On delivery of the Draft Year 3 Evaluation Report:	\$20,000
Payment 10:	On delivery of the Final Year 3 Evaluation Report:	\$10,000

County shall reimburse Consultant within 45 days of receipt of original invoices referencing this Agreement which reflect the current date, item being billed, and compensation due. Invoices shall be submitted to El Dorado County Public Health Finance Division, 941 Spring Street, Suite 3, Placerville, CA 95667. Total compensation for Consultant's services shall not exceed \$110,000.

#### ARTICLE IV - AMENDMENT

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.

#### ARTICLE V - DEFAULT, TERMINATION, AND CANCELLATION

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time of to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** Either party may terminate this Agreement for any reason in whole or in part upon written notice thirty (30) calendar days prior to its effect. If such prior termination is effected by County, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which parties may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination by County, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

#### ARTICLE VI - INDEPENDENT CONTRACTOR/LIABILITY

Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized

herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

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

#### **ARTICLE VII - CALIFORNIA RESIDENCY (FORM 590)**

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

#### **ARTICLE VIII - TAXPAYER IDENTIFICATION / FORM W9**

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

#### **ARTICLE IX - FISCAL CONSIDERATIONS**

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

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

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

**ARTICLE X - 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 to parties as follows:

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

or to such other location as County directs.

Notices to Contractor shall be as follows:

**THE SPHERE INSTITUTE**  
500 AIRPORT BLVD, SUITE 340  
BURLINGAME, CA 94010  
ATTN: VICKY WHEELER, Executive Administrator

or to such other location as Contractor directs.

**ARTICLE XI - INTEREST OF PUBLIC OFFICIAL**

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

**ARTICLE XII – HIPAA**

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

**ARTICLE XIII - INDEMNITY**

To the fullest extent of the law, Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name,

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

#### **ARTICLE XIV - VENUE**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

#### **ARTICLE XV - INSURANCE**

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

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. Professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for

herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
  2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except workers compensation and professional liability insurance policies.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

**ARTICLE XVI - ADMINISTRATOR**

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

**ARTICLE XVII - AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**ARTICLE XVIII - PARTIAL INVALIDITY**

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

**ARTICLE XIX - ENTIRE AGREEMENT**

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



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

**COUNTY OF EL DORADO**

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

Date: 3-21-06

**ATTEST:**  
Cindy Keck, Clerk

By: Cindy Keck Date: 3-21-06  
Deputy Clerk

**CONTRACTOR**

By: Thomas E. MaCurdy  
Thomas E. MaCurdy, Director  
The SPHERE Institute  
A California Non-Profit Corporation

Date: 2/22/06