

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL
Meeting of September 12, 2006**

AGENDA TITLE: Agreement #320-S0611 with Mental Health Systems, Inc.

DEPARTMENT: Human Services-Social Services	DEPT SIGNOFF: <i>[Signature]</i>	CAO USE ONLY: 8/30 <i>C Laura Schwartz</i>
CONTACT: John Litwinovich		
DATE: 8/24/2006	PHONE: 7275	

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

Human Services-Social Services Division recommends that the Board:

- 1) Approve Agreement for Services #320-S0611 with Mental Health Systems, Inc. for provision of foster care/group home services to clients of the Department of Human Services-Social Services Division, Child Protective Services Program. The total amount of this two-year Agreement shall not exceed \$240,000.
- 2) Authorize Chairman to execute said Agreement.

CAO RECOMMENDATIONS: *Recommend approval. Laura S. Gill 8/30/06*

Financial impact? () Yes (X) No Funding Source: (X) Gen Fund (X) Other
Other: Federal, State and County

BUDGET SUMMARY:

Total Est. Cost	\$240,000.00
Funding	
Budgeted	\$240,000.00
New Funding	\$0.00
Savings	\$0.00
Other	\$0.00
Total Funding	\$240,000.00
Change in Net County Cost	\$0.00

CAO Office Use Only:

4/5's Vote Required () Yes (X) No
 Change in Policy () Yes (X) No
 New Personnel () Yes (X) No
CONCURRENCES:
 Risk Management
 County Counsel
 Other _____

***Explain** Funds are budgeted for FY 2006/07, and the remainder will be budgeted in future fiscal years.

BOARD ACTIONS:

Vote: Unanimous _____ **Or**
Ayes:
Noes:
Abstentions:
Absent:

Rev. 04/05

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors

Date: _____

Attest: Cindy Keck, Board of Supervisors Clerk

By: _____



**EL DORADO COUNTY
DEPARTMENT OF HUMAN SERVICES**

John Litwinovich
Director

August 24, 2006

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Members of the Board:

Title: Agreement #320-S0611 with Mental Health Systems, Inc.

Recommendations:

Human Services-Social Services Division recommends that the Board:

- 1) Approve Agreement for Services #320-S0611 with Mental Health Systems, Inc. for provision of foster care/group home services to clients of the Department of Human Services-Social Services Division, Child Protective Services Program. The total amount of this two-year Agreement shall not exceed \$240,000.
- 2) Authorize Chairman to execute said Agreement.

Reasons for Recommendations:

The Board is being asked to make findings that this independent Contractor can more economically and feasibly perform the services requested. Procurement and Contracts prepared Agreement #320-S0611 with Mental Health Systems, Inc. to provide foster care/group home services on an as requested basis to clients of the Child Protective Service Program. Agreement #320-S0611 will be effective upon execution and shall expire two years later. The County officer or employee with responsibility for administering this Agreement is John Litwinovich, Director, Department of Human Services. County Counsel and Risk Management have approved the Agreement. A copy is on file with the Board Clerk.

Fiscal Impact:

The maximum dollar amount of this two-year Agreement is \$240,000. Funds are budgeted for FY 2006/07, and the remainder will be budgeted in future fiscal years. Funding sources are Federal, State and County.

Net County Cost:

No change in the net county cost.

Action To Be Taken Following Approval:

Board Clerk to:

- 1) Forward two originals of the executed Agreement for Services #320-S0611 to Procurement and Contracts.
- 2) Auditor's Office will authorize payment of future invoices.

Sincerely,

John Litwinovich
Director of Human Services

CONTRACT ROUTING SHEET

Date Prepared: 1/31/06

Need Date: _____

PROCESSING DEPARTMENT:

Department: CAO/Proc. & Contracts
 Dept. Contact: Pam Carlone
 Phone #: 5833
 Department Head Signature: Bonnie H. Rich
 Bonnie H. Rich

CONTRACTOR:

Name: Mental Health Systems, Inc.
 Address: 1350 East 750 North
Urem, UT 84097
 Phone: 801-227-2100
 Attn: Layla Workman

CONTRACTING DEPARTMENT:

Human Services

Service Requested: Foster Care/Group Home Services "as requested"

Contract Term: 2 Years Contract Value: \$240,000

Compliance with Human Resources requirements? Yes: No:

Compliance verified by: Perm Kimball-Smith 8/31/05 /pc

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 3/15/06 By: XB [Signature]
 Approved: Disapproved: Date: _____ By: _____

Agmt Per - Apprd per T. Beck / pc

Comment: Article XII. D, second line should read: "whole or in part upon seven (7) calendar days written notice by County without cause."

Bonnie - if this is standard language it should be universally changed. The words about notice are out of order and we shouldn't be referring to "reasons if it is without cause"

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: Date: 3/31/06 By: [Signature]
 Approved: Disapproved: Date: _____ By: _____

MAR 15 2006

FORWARD TO COUNTY COUNSEL BY: _____
 DATE: 2-1-06
 ATTORNEY: _____
 DEPT/INDEX NO.: 010100

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____

Wendy A. Winland 8/31/05 /pc

ORIGINAL

AGREEMENT FOR SERVICES #320-S0611

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 Mental Health Systems, Inc., a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 9465 Farnham Street, San Diego, CA 92123, with the facility site being Universal Health Services (UHS)/Provo Canyon School, located at 1350 East 750 North, Orem, UT 84097; (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide foster care/group home services on an "as requested" basis for clients referred by the Human Services Department; and

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

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

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

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

ARTICLE I

Scope of Services: Contractor agrees to furnish Foster Care/Group Home Services for clients referred to them by the Human Services Department as follows:

1. Furnish children with room and board, clothing, personal needs, recreation, transportation, education, incidentals, supervision, social services, nurturing, care, treatment, and training suited to their needs.

2. Follow administration requirements related to medical screening, physical examination, medical testing, and immunization.
3. Adhere to all licensing requirements.
4. Encourage the maintenance of the natural parent-child relationship and include children's parents in the treatment plans, when possible.
5. In no instance, use corporal punishment at any time, deprivation of meals, monetary allowance, visits from parents, home visits, threat of removal or any type of degrading or humiliating punishment, and shall instead use constructive, alternative methods of discipline.
6. Abide by laws pertaining to confidentiality.
7. Adhere to the case plan objectives included in all treatment plans created by the County that reflect the case plan "court-ordered" service objectives of the placing authority.
8. Participate in all multidisciplinary team meetings when requested by child's case manager.
9. Conduct staff review meetings on children at least quarterly.
10. Submit initial diagnostic summary on child to the County no later than one month after the child's placement. Summaries shall include, but not be limited to:
 - a. Medical and dental needs;
 - b. Psychological/psychiatric evaluations obtained;
 - c. Staffing review summaries;
 - d. Educational assessment;
 - e. Peer adjustment;
 - f. Relationship to staff;
 - g. Involvement in recreation programs;
 - h. Behavioral problems;
 - i. Short-term treatment objectives (goals established for the next three months);
 - j. Long-range goals, including anticipated length of placement;
 - k. Tasks planned to reach objectives and goals and the staff assigned to perform those tasks;
 - l. Identification of unmet needs; and
 - m. Involvement of children and their parents in the treatment program.
11. Submit on-going written evaluations to the County quarterly, beginning the date the child was placed. These evaluations shall include, but not be limited to:

- a. Current status of children's physical and psychological health;
 - b. Reassessment of children's adjustment to the home, program, peers, school, and staff;
 - c. Progress toward short-term objectives and long-range goals, including tasks which have been performed to reach these objects and goals;
 - d. Reassessment of unmet needs and efforts made to meet these needs;
 - e. Modification of treatment plans, as a result of MDT case consultation, updated case plan as regards to tasks to be performed, and anticipated length of placement; and
 - f. Involvement of children and their parents in treatment programs.
12. Immediately notify County, by telephone, of significant changes in children's health, behavior, or location, and provide a follow-up written incident report as soon as possible afterwards.
 13. Submit copies of any pertinent information, such as, school reports, medical reports, and psychological/psychiatric reports as completed.
 14. Provide County with at least seven (7) days prior notice of intent to discharge children, unless it is agreed upon with the County that less notice is necessary.
 15. Provide services to children in the same manner in which it provides said services to all other individuals receiving services from Contractor subject to any limitations contained in children's treatment plans.
 16. Provide state and federal agencies access to documentation when documentation is maintained on children in their care.
 17. Notify the County immediately if an application is made on behalf of children for any kind of income. Examples of include, but are not limited to: child support payments, Veterans Benefits, Railroad Retirement, Social Security, RSHDI, and Supplemental Security Income/State Supplemental Program (SSI/SSP).
 18. Remit to Department of Human Services any income received on behalf of children while in foster care up to the full cost of board and care plus medical cost. In addition, cooperate to have the Social Security Administration, or the appropriate agency, make the Department of Human Services the payee for any funds received on behalf of children.
 19. Possess all licenses, permits, qualifications and approvals of whatsoever nature legally required for Contractor to practice its profession. Contractor shall, at its sole expense, keep in effect during the term of this Agreement the required documents. If any of Contractor's licenses are revoked, this Agreement shall become terminated automatically, without notice, effective as of the date such license is revoked.
 20. Certify that the following processes are in place:

- a. Written policies, procedures and standards of conduct that articulates the organization's commitment to comply with all applicable Federal and State standards;
- b. The designation of a compliance officer and a compliance committee that are accountable to senior management; effective training and education for the compliance officer and the organization's employees;
- c. Enforcement of standards through well-publicized disciplinary guidelines;
- d. Provisions for internal monitoring and auditing; provision for prompt response to detected offenses; and
- e. Development of corrective action initiatives relating to the provision of foster care services.

21. Recognize that, while County may place children in Contractor's facility, County is under no obligation to place any child in the Contractor's facility.

County shall:

1. Provide Contractor with a case plan and knowledge of the background and needs of children placed with Contractor, necessary for effective care. This shall include social work assessments, medical reports, educational assessments, psychological/psychiatric evaluations, and identification of special needs, when necessary. This shall be made available to Contractor within 14 days from date of placement.
2. Work with Contractor, who will then work with the placement social worker, to create an ongoing case plan.
3. Work toward termination of children's placement with Contractor.
4. Continue paying for children's care as long as eligible and Contractor maintains children on an active status or until County requests that placement be terminated.
5. Assist in the maintenance of children's constructive relationships with parents and other family members, and to involve parents in future planning for children.
6. Contact children referred by County in Contractor's care at least once a month. If case plan would indicate less frequent contact, Contractor will be informed.
7. Inform Contractor if children have any dangerous propensities.
8. Provide Medi-Cal cards or other medical coverage at the time of placement.
9. Provide authorization for medical treatment, signed by children's parents or legal guardians.
10. Provide clothing allowance, as permitted to meet initial clothing needs.
11. Provide assistance with emergencies.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire two (2) years from date thereof.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor monthly in arrears of each “service month”. Service months shall be defined as calendar months during which Contractor provides services. Payment shall be made at the current Aid to Families with Dependant Children – Foster Care Foster Family Agency or Group Home Rate, as applicable, in accordance with Exhibit “A”, marked “Foster Care Rates”, incorporated herein and made by reference a part hereof, as set forth and periodically amended by the State of California. The first payment shall be made no later than 45 days from last day of the month of placement, with subsequent payments to be made monthly, within 30 days of the last day of the service month.

The total amount of this Agreement shall not exceed \$240,000.00 for the two (2) year period.

ARTICLE IV

Confidentiality: The Contractor shall protect from unauthorized disclosure names and other identifying information concerning person receiving services pursuant to this Agreement, except for statistical information not identifying any client. The Contractor shall not use such information for any purpose other than carrying out the Contractor’s obligations under this Agreement. The Contractor shall promptly transmit to the County all request for disclosure of such information not originating from the client. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such information to anyone other than the County, except when subpoenaed by a court. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finder or voice print or a photograph. If the Contractor receives any individually identifiable health information (“Protected Health Information” or “PHI”) from County or creates or receives any PHI on behalf of County, the Contractor shall maintain the security and confidentiality of such PHI as required of County by applicable laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the regulations promulgated thereunder.

ARTICLE V

HIPAA Compliance: As a condition of Contractor performing services for the County of El Dorado, Contractor shall execute that Business Associate Agreement which is attached hereto as Exhibit "B", which is incorporated herein for all intents and purposes.

ARTICLE VI

Nondiscrimination: Assurance of compliance with the El Dorado County Department of Human Services nondiscrimination in State and Federally assisted programs requirement:

Contractor hereby agrees that they will 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 (j); 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 will 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 the 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 (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

By accepting this assurance, the 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 CDSS 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, CDSS 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 the Contractor directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

ARTICLE VII

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VIII

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

ARTICLE VI

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE X

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

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

ARTICLE XI

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

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

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

ARTICLE XII

Default, Termination, and Cancellation:

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

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

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. 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 XIII

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

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
HUMAN SERVICES DEPARTMENT
3057 BRIW ROAD
PLACERVILLE, CA 95667
ATTN: JOHN LITWINOVICH, DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

PROVO CANYON SCHOOL
1350 EAST 750 NORTH
OREM, UT 84097
ATTN: BILL PARKES, CFO

or to such other location as the Contractor directs.

ARTICLE XIV

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

ARTICLE XV

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.

- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is required.
- E. General or Professional Liability certification must show inclusion of abuse/molestation coverage.
- F. 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.
- G. 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.
- H. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of 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.
- I. 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.
- J. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

- K. 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.
- L. 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.
- M. 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.
- N. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- O. 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.
- P. 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 the protection of the County.

ARTICLE XVI

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

ARTICLE XVII

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

ARTICLE XVIII

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 XIX

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

ARTICLE XX

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

ARTICLE XXI

Administrator: The County Officer or employee with responsibility for administering this Agreement is John Litwinovich, Human Services Director, or successor.

ARTICLE XXII

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 XXIII

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 XXIV

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 XXV

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.

CONTRACT ADMINISTRATOR AND DEPARTMENT HEAD CONCURRENCE:

By: *John Litwinovich* Dated: 4/27/06
John Litwinovich, Director
Human Services Department

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
Chairman
Board of Supervisors
"County"

ATTEST:
Cindy Keck, Clerk
of the Board of Supervisors

By: _____ Date: _____
Deputy Clerk

-- CONTRACTOR --

Dated: 7/5/2006

**MENTAL HEALTH SYSTEMS, INC.
A CALIFORNIA CORPORATION**

By: *Bill Eastman* wood
Bill Eastman
President/Executive Director
"Contractor"

By: *Richard Carulla*
Corporate Secretary

Dated: 7-26-06

EXHIBIT "A"

El Dorado County Foster Care Rates

Effective 7/1/02

Reference: ACL #01-55 (8/22/01)

Foster Family Homes & Kin-GAP

0-4 years old	5-8 years old	9-11 years old	12-14 years old	15-19 years old
\$425	\$462	\$494	\$546	\$597

Special Care Increments

Level 1	Level 2	Level 3	Level 4
\$200	\$350	\$525	\$1,000

Initial Clothing Allowance

0 - 6 years old	7 - 12 years old	13 - 20 years old
\$154	\$211	\$264

Annual Clothing Allowance

4 1/2 - 8 years old	9 - 12 years old	13 - 20 years old
\$155	\$212	\$319

Infant Supplement

Group Home	Foster Family Home/Foster Family Agency
\$848	\$391

FFA Treatment Rates

0-4 years old	5-8 years old	9-11 years old	12-14 years old	15-19 years old
\$1,589	\$1,648	\$1,697	\$1,787	\$1,865

Group Homes

RCL 1	RCL 2	RCL 3	RCL 4	RCL 5	RCL 6	RCL 7
\$1,454	\$1,835	\$2,210	\$2,589	\$2,966	\$3,344	\$3,723

RCL 8	RCL 9	RCL 10	RCL 11	RCL 12	RCL 13	RCL 14
\$4,102	\$4,479	\$4,858	\$5,234	\$5,613	\$5,994	\$6,371

EXHIBIT "B"

HIPAA Business Associate Agreement

This HIPAA 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 entered into the Underlying Agreement pursuant to which Contractor 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 made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and

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

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

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

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

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

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

legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:

- (a) The disclosure is Required by Law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
 - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
 - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
 - (4) not disclose PHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
 - (5) de-identify any and all PHI of County received by Contractor under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as Required by Law, or as otherwise permitted by law.

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

- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
- B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
- C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Business Associate Agreement.
- D. Report to County any use or disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware.
- E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Business Associate Agreement.
- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.

- G. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the County and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
- H. Contractor will report any security incident of which it becomes aware to the County. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or “pings”.
- I. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
- J. May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).

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

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
- B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County’s request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor’s internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor’s compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
- F. Within sixty (60) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor’s possession constitutes a Designated Record Set.

G. Not make any disclosure of PHI that County would be prohibited from making.

5. Obligations of County.

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

6. Term and Termination.

- 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 Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the Contractor, the County shall either:
 - (1) Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the Contractor 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 Contractor shall return or destroy all PHI received from the County, created or received by the Contractor on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Contractor.

Contractor shall retain no copies of the PHI.

- (2) In the event that the Contractor determines that returning or destroying the PHI is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such PHI.

7. HIPAA Business Associate Indemnity

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

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

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

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such

interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

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

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

Dated: 7/5/06

Dated: 4/27/06

Signed: Bill Eastwood
Bill Eastwood
Mental Health Systems, Inc.

Signed: John Litwinovich
John Litwinovich, Director
Human Services Department
El Dorado County