

AGREEMENT FOR SERVICES #404-O1511

Charitable Fund Agreement

THIS AGREEMENT is 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 El Dorado Community Foundation, a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 312 Main Street, Suite 201, Placerville, CA 95667 (Mailing: PO Box 1388, Placerville, CA 95667) and whose Agent for Service of Process is William John Roby, 3097 Cedar Ravine Road, Placerville, CA 95667 (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, County administers an array of senior services and programs through the Health and Human Services Agency that promote the health and well-being of older adults in the community; and

WHEREAS, County senior services are provided through the coordinated effort of multiple Health and Human Services Agency programs to achieve seamless service delivery and optimal outcomes for recipients; and

WHEREAS, County senior services programs and activities are funded by various Federal and State grant funds, fees for services, donations, and County General Fund Contribution; and

WHEREAS, the cost of operations for senior services programs has steadily increased while Federal and State revenue has remained flat or decreased in certain program areas requiring additional General Fund Contribution for continuation of services at traditional levels; and

WHEREAS, generous members of our community have indicated they would like to donate funds to the County specifically for use by the senior services programs; and

WHEREAS, Contractor has represented to County that it is a non-profit organization that promotes charitable giving in El Dorado County that is able to manage a charitable fund created specifically for the senior services programs, once a defined minimum level of contribution is met; and

WHEREAS, Resolution 198-2014, adopted by the Board of Supervisors on November 17, 2014, authorized the Health and Human Services Agency to establish a charitable fund specifically for the Senior Day Care Services Program; and

WHEREAS, Resolution 035-2015, adopted by the Board of Supervisors on March 3, 2015, superseded and replaced Resolution 198-2014 to include all Health and Human Services Agency senior services programs and activities.

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

ARTICLE I

A. Definitions: The following definitions shall apply to this contract:

Available to Spend	The available to spend is calculated based on a percentage of the fair market values for the previous 12 months, that can be utilized in the upcoming year.
Component Fund	Funds established by donors and owned by the Community Foundation.
Donations	All assets donated to the Contractor which are designated as being for the Senior Services Fund shall be added to and become part of the Senior Services Fund.
Donor	Any individual or group of individuals who makes a current or deferred gift to the Senior Services Fund
Endowed Funds	A gift of money or other asset that is donated to establish a permanent source of charitable funds that are used to generate interest. The interest of which is then used for charitable purposes.
Principal	The sum of the dollar values of all gifts to the endowment.
Senior Services Fund	The charitable fund for the Health and Human Services Agency senior services programs and activities managed by Contractor.

ARTICLE II

Creation of the Fund: The County hereby establishes the County of El Dorado Senior Services Fund (Senior Services Fund) as a Component Fund under the administration of Contractor.

Donations of any amount may be made to this Senior Services Fund at any time. Any other person may make a subsequent contribution to the Contractor for the Senior Services Fund. The minimum size of a Component Fund of the Contractor is currently \$10,000.00. All gifts to the Senior Services Fund are irrevocable.

ARTICLE III

Purpose of Senior Services Fund: The Senior Services Fund is established to charitably support the senior services programs, services, and activities of the County Health and Human Services Agency.

ARTICLE IV

Term: This Agreement is effective upon full execution by both parties and shall continue in effect unless terminated earlier pursuant to the provisions contained herein this Agreement under the Article(s) titled "Default, Termination, and Cancellation" or "Fiscal Considerations."

ARTICLE V

Component Funds:

- A. Funds as Component Parts of the Contractor: All funds created under the terms and conditions described in this Agreement are intended to be, and will be administered as, component parts of El Dorado Community Foundation under *Treasury Regulations*, “Section 1.170A-9(f)(11)”. As these Treasury regulations require, and as the articles of incorporation and the bylaws of the Contractor set forth, all Component Funds are specifically subject to the powers of the Contractor’s Board of Directors as the governing body of a community trust.
- B. Additional Contribution to the Senior Services Fund: Donations are subject to disapproval by the Contractor under the terms and conditions as set forth by the County. Contractor is responsible for ensuring that all donations are lawful. Contractor is strictly prohibited from accepting contributions from illicit funds or any potentially illegal source.
- C. Holding Assets of Funds: For the purposes of investment, the Contractor does not need to segregate the assets of any single fund from the assets of the Contractor’s other Component Funds, but may choose to do so.

However, if a fund’s assets are pooled with those of other funds for investment purposes, the Contractor’s Board of Directors will keep a separate account of that fund’s assets, and all investment earnings on its assets (including interest, capital appreciation, and dividends- net of administrative fees) will be credited to that fund.

D. Administrative Fees:

The Contractor assesses an annual administrative fee on the Senior Services Fund. This fee is 1.5% of the Senior Services Fund’s average monthly market value. Contractor shall subtract the 1.5% annual administrative fee from the annual Available to Spend total prior to the release of the annual distribution of the Available to Spend funds to the County. The result is that the annual payment for the administrative fee will coincide with the annual distribution of Available to Spend funds made to the County.

This fee is applied to the general operating costs of the Contractor, and covers the following expenses associated with the administration of the Senior Services Fund:

1. Customized fund design
2. Investment/asset management services (quarterly fund statements, monitoring investment performance, setting and reviewing investment policies)
3. Administrative services (IRS reporting, acknowledgement of gifts for tax purposes)
4. Quarterly, detailed accountings to County, itemizing contributions, withdrawals, and net earnings/loss
5. Address pressing community needs or important civic issues through convening community leaders and targeted initiatives
6. Attracting funds from larger private foundations and other outside sources

Donors are responsible for payment of all fees to their professional advisors (attorney, accountant, financial advisor, etc.) involved in the set-up of their Donation/contribution.

ARTICLE VI

Endowed Funds: It is intended for the Endowed Funds to be held in perpetuity with the Principal never invaded. The following applies specifically to Endowed Funds.

- A. Distributions: For all Endowed Funds, the Available to Spend amount for the upcoming calendar year will be determined based on a rate of 5% of the average fair market values for the previous twelve quarter ending balances, as of September 30 of the previous year. New funds must be in existence for at least four quarters by September 30 of the prior year in order to receive an amount Available to Spend for the next year. For purposes of this provision, a gift received on any day within a quarter will be considered to be held by the Foundation for the entire quarter.

The Available to Spend amount for the Senior Services Fund is to be used only for purposes of direct support of the County Health and Human Services Agency senior services programs. Administrative fees charged by the Contractor will be in addition to the Available to Spend amount each year.

Any Available to Spend amount not spent in prior years is to be added to the current year Available to Spend amount.

ARTICLE VII

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 VIII

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 IX

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 X

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 XI

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 XII

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 XIII

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 contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XIV

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 with 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 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 the other party 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 upon written notice by County without cause to the other party for any reason. If such prior termination is effected, Contractor shall distribute all funds on deposit or accrued less pro rata administrative fees as described herein. 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 XV

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
HEALTH AND HUMAN SERVICES AGENCY
3057 BRIW ROAD
PLACERVILLE, CA 95667-5321
ATTN: CONTRACTS UNIT

Or to such other location as the County directs with a carbon copy to

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS DIVISION
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: PURCHASING AGENT

Notices to Contractor shall be addressed as follows:

EL DORADO COMMUNITY FOUNDATION
312 MAIN STREET, SUITE 201
PLACERVILLE, CA 95667
ATTN: EXECUTIVE DIRECTOR (or PRESIDENT)

Or to such other location as the Contractor directs.

ARTICLE XVI

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 pursuant to the provisions contained herein this Agreement under the Article titled "Notice to Parties." Said notice shall become part of this Agreement upon acknowledgment in writing by the County 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.

In the event of a change in address for any County office or location referred to or impacted by this Agreement, County shall notify Contractor in writing pursuant to the provisions contained herein this Agreement under the Article titled "Notice to Parties." Said Notice shall become a part of this Agreement 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 XVII

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 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 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 XVIII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager (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.
 - 1. If Contractor has no employees, they shall not be required to obtain Worker's Compensation and Employer's Liability insurance. Should, during the term of this Agreement, Contractor hire one or more employees who will provide any services related to this Agreement, Contractor shall immediately obtain full Workers' Compensation and Employers' Liability insurance and furnish County with certificate(s) for same.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event Contractor uses motor vehicles in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the Risk Manager as evidence that the above-required insurance is being maintained.
- F. The insurance shall be issued by an insurance company acceptable to the County of El Dorado Risk Management Department or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the 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 for breach pursuant to the provisions contained herein this Agreement under the Article titled "Default, Termination, and Cancellation."
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer shall not cancel the insured's coverage without 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" page, 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 as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be 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. Either:
 1. Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or
 2. 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 expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide both insurance and evidence of insurance to County that shall cover claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of County.

ARTICLE XIX

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 XX

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 XXI

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

ARTICLE XXII

California Residency (Form 590): If Contractor is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has 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 XXIII

Nonresident Withholding: If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

ARTICLE XXIV

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 XXV

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XXVI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Kristin Brinks, Deputy Director, Community Services Division, Health and Human Services Agency, 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 to the obligations set forth herein.

ARTICLE XXVIII

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 XXIX

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

ARTICLE XXX

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.

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ARTICLE XXXI

Entire Agreement: This Agreement for Services #404-O1511, all Amendments thereto, 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.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: _____ Dated: _____
Kristin Brinks
Deputy Director
Health and Human Services Agency

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: _____ Dated: _____
Don Ashton, M.P.A.
Director
Health and Human Services Agency

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Services #404-O1511 on the dates indicated below.

--- COUNTY OF EL DORADO ---

Dated: _____

By: _____

Brian Veerkamp, Chair
Board of Supervisors
"County"

ATTEST:

James S. Mitrising
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

--- CONTRACTOR ---

**EL DORADO COMMUNITY FOUNDATION
A CALIFORNIA CORPORATION**

By: _____
William Roby
Executive Director
"Contractor"

Dated: _____

By: _____
Corporate Secretary

Dated: _____

JA