

AGREEMENT FOR SERVICES

#606-PHD0507

**DOMESTIC VIOLENCE SERVICES
WOMENSPACE UNLIMITED,
SOUTH LAKE TAHOE WOMEN'S CENTER**

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**DOMESTIC VIOLENCE SERVICES
WOMENSPACE UNLIMITED,
SOUTH LAKE TAHOE WOMEN'S CENTER**

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 Womenspace Unlimited, South Lake Tahoe Women's Center, a California Nonprofit Public Benefit Corporation qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 2941 Lake Tahoe Boulevard, Suite A, South Lake Tahoe, CA 96150 (hereinafter referred to as "CONTRACTOR");

WITNESSETH

WHEREAS, COUNTY desires to obtain the services of a CONTRACTOR for the provision of domestic violence services described herein; and

WHEREAS, CONTRACTOR has represented to COUNTY that it is specially trained, experienced, expert and competent to perform the special services required herein and COUNTY has determined to rely upon such representations; 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; 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, CONTRACTOR is agreeable to the rendering of such services on the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is mutually agreed as follows:

REFERENCED CONTRACT PROVISIONS

Term: July 1, 2007 through June 30, 2008 (Maximum financial obligation)

Maximum Obligation of This Agreement: \$59,800.00

Basis for Reimbursement: Actual Marriage License Tax Revenue Collections

Payment Method: Actual Monthly Collections Less Administrative Fees

Notices to COUNTY and CONTRACTOR:

COUNTY: Gayle Erbe-Hamlin, Director of Public Health
County of El Dorado
931 Spring Street
Placerville, CA 95667

CONTRACTOR: Leanne Wagoner, Executive Director
Womenspace Unlimited, South Lake Tahoe Women's Center
2941 Lake Tahoe Boulevard, Suite A
South Lake Tahoe, CA 96150

ARTICLE I - ADMINISTRATOR

The COUNTY Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Director of Public Health, or successor, hereinafter referred to as ADMINISTRATOR.

ARTICLE II - ALTERATION OF TERMS

This Agreement fully expresses all understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by both parties.

ARTICLE III - ASSIGNMENT AND DELEGATION

CONTRACTOR is engaged by COUNTY for their unique qualifications and skills as well as those of their personnel. CONTRACTOR shall not subcontract, delegate or assign the services to be provided, in whole or in part, to any other person or entity without prior written consent of the COUNTY.

ARTICLE IV - 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 V - 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 §394.

ARTICLE VI - 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 the term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00

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 - CLIENTS RIGHTS

CONTRACTOR shall establish written procedures for informing clients of their rights including the right to file a complaint alleging discrimination, violation of their civil rights, or other inappropriate treatment.

ARTICLE IX - CODE OF CONDUCT

CONTRACTOR shall establish a written Code of Conduct for employees, volunteers, interns and the Board of Directors which shall include but not be limited to, standards related to the use of drugs and/or alcohol; staff relationships with clients/ residents; prohibition of sexual conduct with clients/residents; and conflict of interest. Prior to providing any services pursuant to this Agreement, all employees, volunteers and interns shall agree, in writing, to maintain the standards set forth in the Code of Conduct. A copy of the Code of Conduct shall be provided to each client and shall be posted in writing in a prominent place in CONTRACTOR'S service facility (ies).

ARTICLE X - COMPENSATION FOR SERVICES

COUNTY shall pay CONTRACTOR fifty percent (50%) of actual monthly El Dorado County marriage license tax revenue collections, less eight percent (8%) Administrative Fees, and additional domestic violence offender's court imposed fines actually collected, up to the TOTAL MAXIMUM OBLIGATION of the Agreement. CONTRACTOR'S billings shall be on a form approved or provided by ADMINISTRATOR. Payments to CONTRACTOR shall be released by COUNTY no later than forty-five (45) days after receipt of the correctly completed billing form.

ARTICLE XI - CONFIDENTIALITY

- A. CONTRACTOR shall conform to and monitor compliance with all State and federal statutes and regulations regarding confidentiality of domestic violence counselors, including the confidentiality of information provisions in California Evidence Code §1037.1-1037.7.
- B. CONTRACTOR shall ensure that no list of persons receiving services under this Agreement is published, disclosed, or used for any purpose except for the direct administration of this program or other uses authorized by law.
- C. Prior to providing any services pursuant to this Agreement, all employees, subcontractors, and volunteer staff or interns of CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and records which may be obtained in the course of providing such services.

ARTICLE XII - 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 XIII - DEFAULT, TERMINATION OR CANCELLATION

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

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

- B. Bankruptcy: This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.
- C. Ceasing Performance: COUNTY may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: COUNTY may terminate this Agreement in whole or in part, for any reason, by giving thirty (30) calendar days written notice to CONTRACTOR. If such 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 the COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obliged to pay more than the Total Maximum Obligation of the Agreement. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set for 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.
- E. Notwithstanding Article XIII. A above, COUNTY may terminate this Agreement effective immediately upon Contractor's receipt of written notice on the occurrence of any of the following events:
 - 1. The loss by CONTRACTOR of legal capacity to operate a business or perform any service required hereunder.
 - 2. Cessation of services.
 - 3. The delegation or assignment of CONTRACTOR'S services operation or administration to another entity without written approval by ADMINISTRATOR.
 - 4. The habitual neglect by any physician or licensed person employed or subcontracted by CONTRACTOR of any duty required pursuant to this Agreement.
 - 5. The continued incapacity of any physician or licensed person to perform duties required pursuant to this Agreement.
 - 6. Unethical conduct or malpractice by any physician or licensed person providing services pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR removes such physician or licensed person from serving persons pursuant to this Agreement.
- F. After receiving a Notice of Termination CONTRACTOR shall do the following:
 - 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of prudent business practice.
 - 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract

performance during the remaining Agreement term.

3. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.
 4. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with their best interests.
 5. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any Equipment and supplies purchased fully and explicitly for the purposes of this Agreement with funds provided by COUNTY.
 6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.
 7. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personal services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.
- G. The rights and remedies of COUNTY provided in this Termination paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE XIV - DRUG-FREE WORKPLACE

CONTRACTOR shall comply with the requirements of the Drug-Free Work Place Act of 1990 (Government Code §8350 et seq.) and will provide a drug-free work place by taking the following actions:

- A. Publish a statement notifying all employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's work place and specifying the actions that will be taken against employees for violations of the prohibitions as required by the Government Code, §8355(a).
- B. Establish a drug-free awareness program as required by the Government Code, §8355(b) to inform all employees about all of the following:
 1. The dangers of drug abuse in the work place;
 2. The person's or organization's policy of maintaining a drug-free work place;
 3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations.
- C. Provide, as required by the Government Code, §8355(c), that every employee engaged in the performance of the contract:

- (1) Be given a copy of the CONTRACTOR'S drug-free policy statement; and
 - (2) As a condition of employment, agree to abide by the terms of the statement.
- D. Failure to comply with these requirements for a drug-free work place may result in suspension of payments under the Agreement or termination of the Agreement or both.

ARTICLE XV - FACILITIES, PAYMENTS AND SERVICES

COUNTY shall compensate CONTRACTOR as specified in Article X herein in exchange for services provided by CONTRACTOR as required hereunder, and CONTRACTOR agrees to provide the services, staffing, facilities, and any equipment and supplies, and reports in accordance with this Agreement as more specifically set forth in Article XXXVI below and in Exhibit A attached hereto. CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff which meet applicable State, federal and County requirements, and which are necessary for the provision of services hereunder.

ARTICLE XVI - 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, §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 XVII - 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. Any material breach of the HIPAA Business Associate Agreement is grounds for default and termination of this Agreement.

ARTICLE XVIII - 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 §2778.

ARTICLE XIX - 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 XX - INSPECTIONS AND AUDITS

- A. CONTRACTOR'S facility, office (or such parts thereof as may be engaged in the performance of this Agreement) and its records shall be subject at all reasonable times to inspection and audit reproduction by COUNTY.
- B. CONTRACTOR shall actively participate and cooperate with any persons designated by COUNTY to be involved in any evaluation or monitoring of services provided pursuant to this Agreement, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.
- C. Per Welfare and Institutions Code §18299, CONTRACTOR shall maintain annual fiscal reports in a form to be prescribed by the County Auditor and Controller.
- D. CONTRACTOR shall maintain client records, books, documents, records and other evidence, accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute "records" for purposes of this section. Such records shall clearly reflect the cost and scope of the services provided to each client.
- E. Within fourteen (14) days after final audit is approved by Agency's Board of Directors, CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR'S operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Agreement.

- F. Following any audit report, in the event of non-compliance with applicable laws and regulations governing funds provided through this Agreement or serious deficiencies in CONTRACTOR'S internal control structure, COUNTY may terminate this Agreement as provided for in Article XIII. E or direct CONTRACTOR to immediately implement appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in writing within fifteen (15) days after receiving notice from COUNTY.
- G. CONTRACTOR will have six (6) months to implement a corrective action plan and to submit to COUNTY a written report of corrective action taken. Failure to implement said corrective action plan shall be cause for termination of this Agreement.

ARTICLE XXI - INSURANCE

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

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.
- D. 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 excess of the CONTRACTOR'S insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. CONTRACTOR'S obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the COUNTY.

ARTICLE XXII - INTEREST OF 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 subcontract 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 XXIII - 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 XXIV - LICENSES AND LAWS

- A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws or regulations of the United States, the State of California, COUNTY or other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of the appeal, such permits, licenses, approvals, certificates, waivers and exemptions. Said inability shall be cause for termination of this Agreement.
- B. CONTRACTOR shall comply with all applicable governmental laws, regulations and requirements regarding domestic violence as they exist now or may be hereafter amended or changed. These laws, regulations, and requirements shall include, but not be limited to, the following:
 - 1. California Government Code, §26840.7 and 26840.8
 - 2. Welfare and Institutions Code, Chapter 5 (commencing with §18290) of Part 6 of Division 9, §18294-18297, 18304-18305 and 18291
 - 3. Title 9, California Administrative Code §622-630
 - 4. California Evidence Code §1037.1-1037.7
 - 5. California Family Code §6211

ARTICLE XXV - LITERATURE

Any new literature, including educational and promotional materials, distributed by CONTRACTOR for purposes directly related to this Agreement shall indicate that CONTRACTOR'S services are supported by County, State and federal funds, as appropriate.

ARTICLE XXVI - MAXIMUM OBLIGATION

- A. The Total Maximum Obligation of COUNTY for services provided pursuant to this Agreement is specified on Page 5 of this Agreement.
- B. Upon written request by CONTRACTOR, and at the sole discretion of ADMINISTRATOR, ADMINISTRATOR may increase or decrease the services provided pursuant to this Agreement, provided the financial Maximum Obligation does not exceed amount specified on Page 5.

ARTICLE XXVII - NO UNLAWFUL USE MESSAGES

CONTRACTOR agrees that information produced through these funds, and which pertains to drug- and alcohol-related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program. Additionally, no aspect of a drug- or alcohol-related program shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (Health and Safety Code §11999). By signing this agreement, the CONTRACTOR agrees to enforce these requirements.

ARTICLE XXVIII - NONDISCRIMINATION IN EMPLOYMENT; PERFORMANCE OF COUNSELORS AND TREATMENT STAFF

- A. CONTRACTOR certifies compliance with California Government Code, Section 12990 and California Code of Regulations, Title II, Division 4, Chapter 5, in matters related to the development, implementation and maintenance of a nondiscrimination program. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

CONTRACTOR will ensure that qualified applicants have equal opportunity for employment, and that qualified employees have equal opportunity during employment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, career development opportunities, and selection for training, including apprenticeship.

- B. CONTRACTOR agrees to post, in conspicuous places, notices available to all employees and applicants for employment setting forth the provisions of the Equal Opportunity Act [42 USC 2000(e)] in conformance with Federal Executive Order No. 11246. CONTRACTOR agrees to comply with the provisions of the Rehabilitation Act of 1973 (29 USC 794).
- C. CONTRACTOR shall only employ individuals as substance abuse counselors who meet all applicable State requirements pertaining to certification and/or licensure, and who are qualified and competent to perform the tasks assigned to them. CONTRACTOR shall regularly evaluate the performance of all its treatment staff and implement immediate corrective action if any performance problems are identified. The COUNTY may request in writing that the CONTRACTOR investigate incidents of suspected poor performance by CONTRACTOR treatment staff, and the CONTRACTOR shall do so within the timeframes and under the terms contained in the COUNTY'S written request.
- D. CONTRACTOR shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. In the event of non-compliance with Subparagraph A or B of this Article or as otherwise provided by State and Federal law, this Agreement may be canceled, terminated or suspended in whole or in part and CONTRACTOR may be declared ineligible for further contracts involving State or federal funds.

ARTICLE XXIX - NONDISCRIMINATION IN SERVICES, BENEFITS AND FACILITIES

- A. CONTRACTOR certifies under the laws of the State of California that the CONTRACTOR shall not unlawfully discriminate in the provision of services because of race, color, creed, national origin, sex, age, or physical or mental disability. CONTRACTOR shall make its program accessible to persons with disabilities. CONTRACTOR shall operate in accordance with State and federal law and in accordance with Title VI of the Civil Rights Act of 1964 [42 USC 2000(d)]; Age Discrimination Act of 1975 (42 USC 6101); Rehabilitation Act of 1973 (29 USC 794); Education Amendments of 1972 (20 USC 1681); Americans with Disabilities Act of 1990 (42 USC 12132); Title 45, Code of Federal Regulations, Part 84; provisions of the Fair Employment and Housing Act (Government Code Section 129000 et seq.); and regulations promulgated thereunder (Title 2, CCR, Section 7285.0 et seq.); Title 2, Division 2, Article 9.5 of the California Government Code, commencing with Section 11135; and Title 9, Division 4, Chapter 6 of the California Code of Regulations, commencing with Section 10800.

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

C. Complaint Process – CONTRACTOR shall furnish all clients with written notice of their right to file complaints alleging discrimination in the delivery of services. This notice shall inform clients that:

Complaints may be filed with the County Administrator or the U.S. Department of Health and Human Services, Office of Civil Rights.

In those cases where the client's complaint is filed initially with the Office of Civil Rights (Office), the Office may proceed to investigate the complaint, or the Office may request that the County Administrator conduct the investigation.

1. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged discrimination and, if not satisfied with the decision, may file an appeal with the Office.

D. Accessibility – If the CONTRACTOR employs more than 15 staff members, it must:

1. Maintain an internal complaint resolution procedure that includes due process standards and provides for the prompt and equitable resolution of complaints alleging any action or omission that transgresses federal or state accessibility laws or regulations.

2. Designate at least one employee as the person responsible for: 1) implementing an internal accessibility program to ensure persons with disabilities have access to the CONTRACTOR'S facility; and 2) receiving and resolving complaints that allege violation of federal or state accessibility laws or regulations.

E. Retaliation - Neither CONTRACTOR, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or State laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or State law.

ARTICLE XXX - NOTICES

A All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to COUNTY shall be in duplicate and addressed as specified on Page 5 of this Agreement or to such other location as COUNTY directs. In the event of notice regarding default, termination, or cancellation, COUNTY reserves the right to give notice by hand-delivery to the address identified for CONTRACTOR on

page 5 of this Agreement.

- B. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature which may expose COUNTY to further liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss of damage to any COUNTY property in possession of CONTRACTOR.
- C. In the event of a death, notification shall be made in accordance with the Notification of Death paragraph of this Agreement.
- D. For purposes of this Agreement, any notice provided by COUNTY may be given by ADMINISTRATOR.

ARTICLE XXXI - NOTIFICATION OF DEATH

CONTRACTOR shall notify ADMINISTRATOR, in a reasonable time, upon becoming aware of the death of any person served hereunder.

ARTICLE XXXII - 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 XXXIII - RECORD KEEPING REQUIREMENTS

- A. CONTRACTOR shall preserve and make available its records for a period of five (5) years from the date of final payment under this Agreement, and for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by either of the following:
 - 1. If this Agreement is terminated or partially terminated, all of the records relating to work terminated shall: a) be preserved and made available for a period of five (5) years from the date of termination; or b) at the sole option of the COUNTY, immediately become the property of the COUNTY and shall be delivered by CONTRACTOR to the COUNTY.
 - 2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later.
- B. In addition to those records described above, CONTRACTOR shall keep all statistical data and records required by the ADMINISTRATOR on forms and/or disks provided by the ADMINISTRATOR. These records shall be available for inspection as required by the ADMINISTRATOR.
- C. CONTRACTOR shall include in all subcontracts entered into with third parties in order to facilitate the providing of the Services hereunder, the following clause:

"(Name of vendor or subcontractor) agrees to maintain and preserve, until five (5) years after termination of CONTRACTOR'S agreement with the County of El Dorado, pertinent books, documents, papers and records of (name of vendor or subcontractor) related to this (purchase order or subcontract) and to permit the County to have access to, to examine and to audit any of such pertinent records."

ARTICLE XXXIV - REFERENCES TO LAWS AND RULES

All references contained in this Agreement and in written instructions or communications of the ADMINISTRATOR to the California Administrative Code, Welfare and Institutions Code, Health & Safety Code, and to other laws, regulations, and policies as they exist at the time, and thereafter as such laws, regulations, and policies may from time to time be changed by appropriate authority during the term of this Agreement, are agreed to be binding on both parties of this Agreement.

ARTICLE XXXV - REPORTS

- A. CONTRACTOR shall submit to COUNTY a semi-annual report to ADMINISTRATOR no later than the tenth (10th) day of the sixth (6th) and twelfth (12th) month of the fiscal year. Such report shall include, but not be limited to, the total number of persons requesting services of the CONTRACTOR, the number of persons served by the CONTRACTOR by each type of service provided, and a description of the social and economic characteristics of persons receiving services by type of service provided.
- B. CONTRACTOR shall make additional reports as required by ADMINISTRATOR concerning CONTRACTOR'S activities as they affect the services hereunder. ADMINISTRATOR will be specific as to the nature of the information requested and allow thirty (30) days for CONTRACTOR to respond.

ARTICLE XXXVI - SERVICES

CONTRACTOR shall provide services to victims of domestic violence as defined in §6211 of the California Family Code, as more specifically described in Exhibit A attached hereto, incorporated herein, and per the following California Welfare and Institutions Code provisions:

§18294. Program design; services to victims

Such programs shall be designed to provide the following basic services to victims of domestic violence and their children:

- (a) Shelter on a 24 hours a day, seven days a week basis.
- (b) A 24 hours a day, seven days a week switchboard for crisis calls.
- (c) Temporary housing and food facilities.
- (d) Psychological support and peer counseling.
- (e) Referrals to existing services in the community and follow up on the outcome of the referrals.

- (f) A drop-in center to assist victims of domestic violence who have not yet made the decision to leave their homes, or who have found other shelter but who have a need for support services.
- (g) Arrangements for school age children to continue their education during their stay at the center.
- (h) Emergency transportation to the shelter, and when appropriate, arrangements with local law enforcement for assistance in providing such transportation.

§18295. Additional services

In addition to the services required in §18294, to the extent possible, and in conjunction with already existing community services, the centers shall provide a method of obtaining the following services for the victims of domestic violence:

- (a) Medical care.
- (b) Legal Assistance.
- (c) Psychological support and counseling.
- (d) Information regarding reeducation, marriage and family counseling, job counseling and training programs, housing referrals and other available social services.

§18296. Cooperation with other agencies; advocacy capacity

The staff of the programs shall work with social service agencies, schools, and law enforcement agencies in an advocacy capacity for those served by the programs.

§18297. Community support and acceptance; volunteers

The staff of each program shall attempt to achieve community support and acceptance of the program by advocating the program to community representatives and groups within the community. Volunteers shall be trained and used to maximum capacity in the delivery of services.

§18298. Bilingual personnel; battered spouses as staff members

Inasmuch as the programs are to serve a variety of cultural backgrounds, to the extent feasible, a portion of the program's personnel shall be bilingual. An effort shall be made to recruit formerly battered spouses as staff members.

CONTRACTOR shall, to the extent possible, provide services pursuant to this Agreement in a culturally competent manner by recruiting, hiring and maintaining trained, experienced staff who can provide competent services to the diverse population served under this Agreement.

ARTICLE XXXVII - SMOKING PROHIBITIONS

CONTRACTOR shall comply with public Law 103-227, also known as the Pro-Children Act of 1994, which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education, or library services to children under the age of 18 if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services that are

provided in private residences; portions of facilities used for inpatient hospital drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, and Children (WIC) coupons are redeemed.

ARTICLE XXXVIII – 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 XXXIX - TERM

The term of this Agreement shall commence and terminate as specified on Page 5 of this Agreement, unless otherwise sooner terminated as provided in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

ARTICLE XL - THIRD PARTY BENEFICIARY

Neither party hereto intends that this Agreement shall create rights hereunder in third parties including but not limited to any subcontractors or any clients provided services hereunder.

ARTICLE XLI - WAIVER OF DEFAULT OR BREACH

Waiver of any default by CONTRACTOR shall not be considered a waiver of any subsequent default. Waiver of any breach by CONTRACTOR of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver of any default or any breach by CONTRACTOR shall not be considered a modification of the terms of this Agreement.

ARTICLE XLII - ENTIRE AGREEMENT

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

COUNTY OF EL DORADO

By: _____

Date: _____

WOMENSPACE UNLIMITED

By: Leanne Wagoner
Leanne Wagoner, Executive Director
Womenspace Unlimited
South Lake Tahoe Women's Center

Date: 6/14/07

By: Mildred Donahue
Mildred Donahue, Finance Director
Womenspace Unlimited
South Lake Tahoe Women's Center

Date: 6/14/07

EXHIBIT A
FY 2007-08
WOMENSPACE UNLIMITED, SOUTH LAKE TAHOE WOMEN'S CENTER
DOMESTIC VIOLENCE PROGRAM
DESCRIPTION OF SERVICES

1. Crisis	<u>Total Victims</u> 325	<u>Total Calls</u> 325
2. Counseling:	<u>Total Victims</u>	<u>Total Sessions</u>
a. Individual/Peer	450	1,800
b. Anger Management	75	2,000
c. Child	50	200
d. Adult Group	75	400
3. Business Center	<u>Total Victims</u> 600	<u>Total Contacts</u> 1,700
4. Shelter, Women & Children	<u>Total Victims</u> 75	<u>Total Nights of Shelter</u> 1,700
Transitional, Women & Children	4	600
5. Food/Clothing	<u>Total Victims</u> 450	<u>Total Meals</u> 8,000
6. Referred by Law Enforcement	<u>Total Victims</u> 175	<u>Total Contacts</u> 175
7. Referred by ER/Hospital	<u>Total Victims</u> 10	<u>Total Contacts</u> 10
Emergency Response to ER/Hospital	5	5
Emergency Response to Law Enforcement	5	5
8. Emergency Transport	<u>Total Victims</u> 30	<u>Total Contacts</u> 30
9. Court Accompaniment	<u>Total Victims</u> 70	<u>Total Contacts</u> 90
Social Service Advocacy	80	100
10. Legal Referral	<u>Total Victims</u> 50	<u>Total Contacts</u> 50
11. Resource & Referral	<u>Total Victims</u> 350	<u>Total Referrals</u> 700
12. Household Establishment	<u>Total Victims</u> 60	<u>Total Contacts</u> 60
13. Follow-up Aftercare	<u>Total Victims</u> 20	<u>Total Contacts</u> 50
14. Hispanic Outreach	<u>Total Victims</u> 600	<u>Total Contacts</u> 600

The Women's Center will serve 1,200 people whose lives have been affected by domestic violence, including women, children and men.

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 will make its 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 Notice and a 10-day 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.