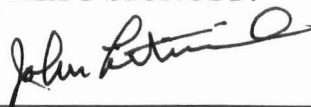
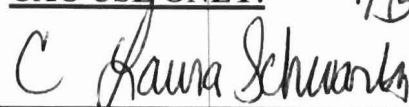


**EL DORADO COUNTY BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

**Meeting of**  
September 26, 2006

**AGENDA TITLE:** Amendment I to Agreement #007-S0711 with Elder Options, Inc.

<b>DEPARTMENT:</b> Human Services (CS)	<b>DEPT SIGNOFF:</b>	<b>CAO USE ONLY:</b>
<b>CONTACT:</b> John Litwinovich		
<b>DATE:</b> 9/15/2006 <b>PHONE:</b> 6163		

**DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:**

Human Services, Community Services Division, recommends that the Board approve and authorize the Chairman to execute Amendment I to Agreement #007-S0711 with Elder Options, Inc., amending the Scope and Compensation to include additional client services and rates for these services to augment provision of in-home geriatric care services, on an "as requested" basis for clients of the Community Services Department during the term 7/1/06 through 6/30/08.

**Agmt available in Viewing packet or on web.**

Amendments are made to scope and compensation to services in order to recognize additional personal care services and night shift & live-in services, and rates.

The term and maximum dollar amounts remain the same as the

**CAO RECOMMENDATIONS:** original agreement approved on June 6, 2006, Recommend approval. Laura S. Gill 9/18/06

<b>Financial impact?</b> ( ) Yes (X) No		<b>Funding Source:</b> ( ) Gen Fund (X) Other	
<b>BUDGET SUMMARY:</b>		Other: Federal & State Grant Funding	
Total Est. Cost \$40,000.00		<b>CAO Office Use Only:</b>	
<b>Funding</b>		4/5's Vote Required ( ) Yes (X) No	
Budgeted	\$20,000.00	Change in Policy ( ) Yes (X) No	
New Funding		New Personnel ( ) Yes (X) No	
Savings*		<b>CONCURRENCES:</b>	
Other	\$20,000.00	Risk Management <input checked="" type="checkbox"/>	
Total Funding	\$40,000.00	County Counsel <input checked="" type="checkbox"/>	
Change in Net County Cost	\$0.00	Other <input type="checkbox"/>	

**\*Explain** Two-year contract. "Other" will be budgeted in FY 2007/08.

**BOARD ACTIONS:**

<p><b>Vote:</b> Unanimous _____ <b>Or</b></p> <p><b>Ayes:</b></p> <p><b>Noes:</b></p> <p><b>Abstentions:</b></p> <p><b>Absent:</b></p> <p>Rev. 5/04 ISKW001 Agenda</p>	<p><b>I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors</b></p> <p><b>Date:</b> _____</p> <p><b>Attest:</b> Cindy Keck, Board of Supervisors Clerk</p> <p><b>By:</b> _____</p>
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EL DORADO COUNTY  
DEPARTMENT OF HUMAN SERVICES  
John Litwinovich  
Director

September 15, 2006

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

Members of the Board:

**Title:** Amendment I to Agreement #007-S0711 with Elder Options, Inc.

**Recommendations:**

Human Services, Community Services Division, recommends that the Board approve and authorize the Chairman to execute Amendment I to Agreement #007-S0711 with Elder Options, Inc., amending the Scope and Compensation to include additional client services and rates for these services to augment provision of in-home geriatric care services, on an "as requested" basis for clients of the Community Services Department during the term 7/1/06 through 6/30/08.

**Reasons for Recommendations:** 6/6/06

On June 6, 2006 the Board executed Agreement #007-S0711 with Elder Options, Inc. for provision of in-home geriatric care services, on an "as requested" basis for clients enrolled in various grant-funded care management programs to help clients of the Human Services-Community Services Division remain in their homes. Services are accessed sporadically on an as-needed basis. Procurement and Contracts prepared Amendment I to Agreement #007-S0711 with Elder Options, Inc., amending the Scope of Services and Compensation for Services to add certain personal care services and night shift and live-in services and rates for these new services. Amendment I will be effective upon execution by the Board. The term of the Agreement remains 7/1/06 through 6/30/08, and the maximum dollar amount remains \$40,000.00. County Counsel and Risk Management have approved the Amendment, and a copy is on file with the Board Clerk.

**Fiscal Impact: Total Cost (or Savings)**

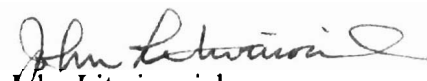
A portion of the funds are included in the FY 2006/07 Budget Request, and the remainder will be budgeted for FY 2007/08.

**Net County Cost:** None. Programs are funded through federal and state grant funding.

**Action to be Taken Following Approval:**

Board Clerk to provide Chief Administrative Office, Procurement and Contracts Division, with two signed originals of Amendment I to Agreement #007-S0711.

Sincerely,

  
John Litwinovich  
Director of Human Services

## CONTRACT ROUTING SHEET

Date Prepared: 8/1/08

Need Date: \_\_\_\_\_

## PROCESSING DEPARTMENT:

Department: CAO/Proc. & Contracts  
 Dept. Contact: Pam Carlone  
 Phone #: 5833  
 Department  
 Head Signature: \_\_\_\_\_

Bonnie H. Rich

## CONTRACTOR:

Name: Elder Options, Inc.  
 Address: P.O. Box 2113  
Placerville, CA 95667  
 Phone: 626-6939

*Pam Carlone*CONTRACTING DEPARTMENT: Human ServicesService Requested: In-home Geriatric Care ServicesContract Term: Expires 6/30/08 Amendment Value: \$ -0-

Compliance with Human Resources requirements? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Compliance verified by: \_\_\_\_\_

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

Approved: ✓ Disapproved: \_\_\_\_\_ Date: 8-15-08 By: Carlone  
 Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

ASSIGNMENT	DATE	08/02/2008
	ATTORNEY	EO KAAPP
	DEPT. INDEX NO.	026102
	BY:	<i>[Signature]</i>

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

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

Approved: ✓ Disapproved: \_\_\_\_\_ Date: 8-18-08 By: [Signature]  
 Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

AUG 16 2008

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

Departments: \_\_\_\_\_  
 Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_  
 Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

# ORIGINAL

## AGREEMENT FOR SERVICES #007-S0711 AMENDMENT I

This Amendment I to that Agreement for Services #007-S0711, 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 Elder Options, Inc., a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 535 Main Street, (Mailing: P.O. Box 2113), Placerville, CA 95667; (hereinafter referred to as "Contractor");

### WITNESSETH

**WHEREAS**, Contractor has been engaged by County to provide in-home geriatric care services on an "as requested" basis for the Human Services Department, Community Services Division, in accordance with Agreement for Services #007-S0711, dated June 6, 2006, incorporated herein and made by reference a part hereof; and

**WHEREAS**, the parties hereto have mutually agreed to revise the Scope of Services and Compensation for Services, with no increase in compensation, hereby amending **ARTICLE I – Scope of Services** and **ARTICLE III - Compensation for Services**.

**NOW THEREFORE**, the parties do hereby agree that Agreement for Services #007-S0711 shall be amended a first time as follows:

#### **ARTICLE I**

**Scope of Services:** Contractor agrees to provide experienced and trained staff to assist senior citizens with personal care, bath services, housework, transportation, ambulation and transfer, respite care, meal preparation, feeding, light housework, laundry, medication set-up/monitoring "Medi-Box", and companionship. Contractor further agrees to provide home visits(s) and psychosocial assessment services.

No work shall commence without prior approval by a Program Supervisor or Manager of a verbal estimate. For services in excess of \$500.00, approval by a Program Supervisor or Manager of a written estimate shall be required prior to the commencement of work.

If Contractor has any knowledge of fraud or abuse to clients during the performance of these services or as a part of Contractor operations, they must report such instances to County, in writing, immediately.

Contractor's office hours shall be Monday through Friday, from 8:00 a.m. to 5:00 p.m. Care Managers shall be available for emergency calls via pager after office hours, on weekends, and on holidays. In-home providers are available twenty-four (24) hours per day, seven (7) days per week.

### ARTICLE III

**Compensation for Services:** For services provided herein, County agrees to pay Contractor monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered, including the name of the Program for which services were provided. For the purposes hereof, the billing rate shall be as follows:

Care manager in-home assessment visit:	\$95.00/hour
In-Home provider services:	\$19.00/hour
12-Hour Night Shift:	\$195.00/shift*
14-Hour Live-in Shift:	\$285.00/shift**

\* In-home provider must have a place to sleep and be able to sleep 6-7 hours/shift.

\*\* In-home provider must be provided room, board and be able to sleep 6-7 hours/shift.

Medication set-up/monitoring "Medi-Box":	\$95.00/hour
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Client Medical Transportation	\$19.00/hour
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In the event an In-home provider is required to use a personal automobile to run errands for a Client, County shall reimburse Contractor for mileage in accordance with Exhibit "A", marked "Board of Supervisors Policy D-1", incorporated herein and made by reference a part hereof.

The total amount of this Agreement shall not exceed \$40,000.00, inclusive of all expenses, for the two (2) year period.

Except as herein amended, all other parts and sections of that Agreement #007-S0711 shall remain unchanged and in full force and effect.

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**Requesting Contract Administrator Concurrence:**

By:  Dated: 8/24/06  
Doug Nowka, Assistant Director  
Human Services Department

**Requesting Department Head Concurrence:**

By:  Dated: 8/24/06  
John Litwinovich, Director  
Human Services Department

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement #007-S0711 the day and year first below written.

---COUNTY OF EL DORADO---

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

By: \_\_\_\_\_

Chairman  
Board of Supervisors  
"County"

ATTEST:  
Cindy Keck, Clerk  
of the Board of Supervisors

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

-- CONTRACTOR --

Dated: 8/30/06

ELDER OPTIONS, INC.  
A CALIFORNIA CORPORATION

By: Carol S. Heape  
Carol Heape, President  
"Contractor"

By: Carol S. Heape  
Corporate Secretary

Dated: 8/30/06

 COPY

AGREEMENT FOR SERVICES #007-S0711

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**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 Elder Options, Inc., a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 535 Main Street, (Mailing: P.O. Box 2113), Placerville, CA 95667; (hereinafter referred to as "Contractor");

**WITNESSETH**

**WHEREAS**, County has entered into various Agreements with various State Agencies and Departments; and

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide in-home geriatric care services on an "as requested" basis for the Human Services Department, Community Services Division; and

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

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

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

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



## **ARTICLE I**

**Scope of Services:** Contractor agrees to provide experienced and trained staff to assist senior citizens with personal care, housework, transportation, ambulation and transfer, respite care, meal preparation, feeding, light housework, laundry, medication monitoring, and companionship. Contractor further agrees to provide in-home assessment services,

No work shall commence without prior approval by a Program Supervisor or Manager of a verbal estimate. For services in excess of \$500.00, approval by a Program Supervisor or Manager of a written estimate shall be required prior to the commencement of work.

If Contractor has any knowledge of fraud or abuse to clients during the performance of these services or as a part of Contractor operations, they must report such instances to County, in writing, immediately.

Contractor's office hours shall be Monday through Friday, from 8:00 a.m. to 5:00 p.m. Care Managers shall be available for emergency calls via pager after office hours, on weekends, and on holidays. In-home providers are available twenty-four (24) hours per day, seven (7) days per week.

## **ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and cover the period of July 1, 2006 through June 30, 2008.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, County agrees to pay Contractor monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered, including the name of the Program for which services were provided. For the purposes hereof, the billing rate shall be as follows:

Care manager in-home assessment visit:	\$95.00/hour
In-Home provider services:	\$19.00/hour
Medication set-up/monitoring "Medi-Box":	\$95.00/hour <del>g</del>

In the event an In-home provider is required to use a personal automobile to run errands for a Client, County shall reimburse Contractor for mileage in accordance with Exhibit "A", marked "Board of Supervisors Policy D-1", incorporated herein and made by reference a part hereof.

The total amount of this Agreement shall not exceed \$40,000.00, inclusive of all expenses, for the two (2) year period.

#### **ARTICLE IV**

**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 V**

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

#### **ARTICLE VI**

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

#### **ARTICLE VII**

**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 VIII**

**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 cancelled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE IX**

**Availability of Funds:** This Agreement is valid and enforceable only if sufficient funds are made available to the States by the United States government and those funds are released by the State to the County for the services to be provided under this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this Agreement in any manner.

The County's obligation for payment of any Agreement beyond the current fiscal year end is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the county shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

## **ARTICLE X**

**Nondiscrimination:** During the performance of this Agreement, the Contractor shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Contractor shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et. Seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2). The applicable regulations of the Fair Employment and Housing Commission implementing Government code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Contractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Contractor shall comply with the following Provisions of Title VI of the Civil Rights Act of 1964 (42 USC 2000), as amended by the Equal Opportunity Act of March 24, 1972 (Public Law 92-261); Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), and all requirements imposed by the applicable Health and Human Services regulations (45 CFR, Part 84); and the Americans with Disabilities Act.

### Statement of Compliance

By signing this Agreement, the Contractor hereby certifies under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirement of Government Code Section 12990 and Title 2, California Code of Regulation, Section 8103.

### **ARTICLE XI**

**Appropriation of Funds:** Contractor hereby certifies to the best of his or her knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

### **ARTICLE XII**

**Confidentiality:** The Contractor shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any client. The Contractor shall not use such information for any purpose other than carrying out the Contractor's obligations under this Agreement. The Contractor shall promptly transmit to the County all requests for disclosure of such information not emanating from the client. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such information to anyone other than the County, except when subpoenaed by a court. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finder or voice print or a photograph.

If the Contractor receives any individually identifiable health information ("Protected Health Information" or "PHI") from County or creates or receives any PHI on behalf of County, the Contractor shall maintain the security and confidentiality of such PHI as required of County by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder

### **ARTICLE XIII**

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

### **ARTICLE XIV**

**Federal, State and Local Laws and Regulations:** Contractor shall comply with all Federal, State and local laws and regulations, requirements, and directives pertinent to its operations. Contractor shall abide by manuals and other guidance issued by the State of California, including any subsequent changes to State and Federal law. All appropriate manuals and updates shall be available for review, or reference by Contractor, from the County Department of Human Services.

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

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

### **ARTICLE XV**

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

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

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

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

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

#### **ARTICLE XVI**

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

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
HUMAN SERVICES DEPARTMENT  
937 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: DOUG NOWKA, ASSISTANT DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

ELDER OPTIONS  
PO BOX 2113  
PLACERVILLE, CA 95667  
ATTN: CAROL HEAPE

or to such other location as the Contractor directs.

#### **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 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) or 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 El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is required.
- E. 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 Risk Management, 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 term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event 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 the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the 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**

**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, certify that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XXII**

**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 XXIII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Doug Nowka, Assistant Director, Human Services Department, or successor.

#### **ARTICLE XXIV**

**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 XXV**

**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 XXVI

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

## ARTICLE XXVII

**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.

### Requesting Contract Administrator Concurrence:

By:  Dated: 4/28/06  
Doug Nowka, Assistant Director  
Human Services Department

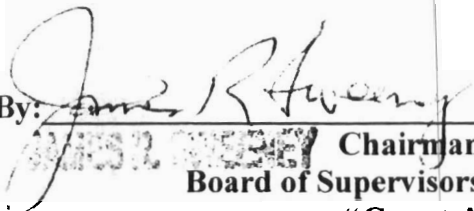
### Requesting Department Head Concurrence:

By:  Dated: 4/28/06  
John Litwinovich, Director  
Human Services Department

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

-- COUNTY OF EL DORADO --

Dated: 6/6/06

By:  Chairman  
Board of Supervisors  
"County"

ATTEST:  
Cindy Keck  
Clerk of the Board of Supervisors

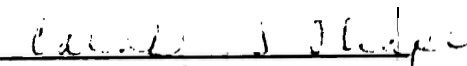
By:  Dated: 6/6/06  
Deputy Clerk

-- CONTRACTOR --

Dated: 5/11/06

ELDER OPTIONS, INC.,  
A CALIFORNIA CORPORATION

By:   
Carol Heape, President  
"Contractor"

By:   
Corporate Secretary

Dated: 5/11/06



# EXHIBIT "A"

## COUNTY OF EL DORADO, CALIFORNIA BOARD OF SUPERVISORS POLICY

Subject:  TRAVEL	Policy Number D-1	Page Number: 1 of 14
	Date Adopted: 12/22/1987	Revised Date: 05/25/1999

### BACKGROUND:

This policy applies to County officers and employees as well as members of boards and commissions required to travel in or out of county for the conduct of County business. This policy also provides for expenses of public employees from other jurisdictions when specifically referenced in policy provisions set forth below.

For ease of reference, the Travel Policy is presented in the following sections:

1. General Policy
2. Approvals Required
3. Travel Participants and Number
4. Mode of Transport
5. Reimbursement Rates
  - a. Maximum Rate Policy
  - b. Private Auto
  - c. Meals
  - d. Lodging
  - e. Other
6. Advance Payments
7. Compliance – Responsibility of Claimant
8. Procedures



COUNTY OF EL DORADO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject:  TRAVEL	Policy Number D-1	Page Number: 2 of 14
	Date Adopted: 12/22/1987	Revised Date: 05/25/1999

POLICY:

1. General Policy

- a. County officers and employees should not suffer any undue loss when required to travel on official County business, nor should said individuals gain any undue benefit from such travel.
- b. County officers or employees compelled to travel in the performance of their duties and in the service of the County shall be reimbursed for their actual and necessary expenses for transportation, parking, tolls, and other reasonable incidental costs, and shall be reimbursed within maximum rate limits established by the Board of Supervisors for lodging, meals, and private auto use. "Actual and necessary expenses" do not include alcoholic beverages.
- c. Travel arrangements should be as economical as practical considering the travel purpose, traveler, time frame available to accomplish the travel mission, available transportation and facilities, and time away from other duties.
- d. Employees must obtain prior authorization for travel, i.e., obtain approvals before incurring costs and before commencing travel.
- e. Receipts are required for reimbursement of lodging costs, registration fees, public transportation and for other expenses as specified, or as may be required by the County Auditor-Controller.



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BOARD OF SUPERVISORS POLICY

Subject:  TRAVEL	Policy Number D-1	Page Number: 3 of 14
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- f. Requests for travel authorization and reimbursement shall be processed using forms specified by the County Auditor and Chief Administrative Office.
- g. The Chief Administrative Officer may, at his or her sole discretion, authorize an exception to requirements set forth in this Travel policy, based on extenuating circumstances presented by the appropriate, responsible department head. Any exception granted by the Chief Administrative Office is to be applied on a case-by-case basis and does not set precedent for future policy unless it has been formally adopted by the Board of Supervisors.

2. Approvals Required

- a. Department head approval is required for all travel except by members of the County Board of Supervisors. Department heads may delegate approval authority when such specific delegation is approved by the Chief Administrative Officer. However, it is the expectation of the Chief Administrative Officer that department heads take responsibility for review and approval of travel.
- b. Chief Administrative Office approval is required when travel involves any of the following:
  - (1) Transportation by common carrier (except BART), e.g., air, train, bus.
  - (2) Car rental.
  - (3) Out-of-county overnight travel.
  - (4) Members of boards or commissions, or non-county personnel.



COUNTY OF EL DORADO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject:  TRAVEL	Policy Number D-1	Page Number: 4 of 14
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(5) Any exceptions required for provisions within this policy, e.g., travel requests not processed prior to travel, requests exceeding expense guidelines or maximums.

c. It remains the discretion of the Chief Administrative Officer as to whether or not costs of travel which were not authorized in advance will be reimbursed, and whether or not exceptional costs will be reimbursed.

3. Travel Participants and Number

a. Department heads and assistants should not attend the same out-of-county conference; however, where mitigating circumstances exist, travel requests should be simultaneously submitted to the Chief Administrative Office with a justification memorandum.

b. The number of travel participants for each out-of-county event, in most instances, should be limited to one or two staff members, and those individuals should be responsible for sharing information with other interested parties upon return.

c. If out-of-county travel involves training or meetings of such technical nature that broader representation would be in the best interest of the County, the department head may submit a memo explaining the situation to the Chief Administrative Office, attached to travel requests, requesting authorization for a group of travelers.

d. Board of Supervisors members shall be governed by the same policies governing County employees except for the following:



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BOARD OF SUPERVISORS POLICY

Subject:  TRAVEL	Policy Number D-1	Page Number: 5 of 14
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(1) A member of the Board of Supervisors requires NO specific authorization.

(2) The following expenses incurred by a member of the Board of Supervisors constitute a County charge:

(a) Actual expenses for meetings and personal travel, necessarily incurred in the conduct of County Business. This includes but is not limited to mileage incurred while traveling to and from the Board members' residence and the location of the chambers of the Board of Supervisors while going to or returning from meetings of the Board of Supervisors.

e. Non-County personnel travel expenses are not normally provided for since only costs incurred by and for county officers and employees on county business are reimbursable. However, reimbursement is allowable for county officers (elected officials and appointed department heads) and employees who have incurred expenses for non-county staff in the following circumstances.

(1) Meals for persons participating on a Human Resources interview panel when deemed appropriate by the Director of Human Resources.

(2) Conferences between County officials and consultants, experts, and public officials other than officers of El Dorado County, which are for





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BOARD OF SUPERVISORS POLICY

Subject:  TRAVEL	Policy Number D-1	Page Number: 6 of 14
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the purpose of discussing important issues related to County business and policies.

- (3) Transportation expenses for a group of County officers and employees and their consultants, and experts on a field trip to gain information necessary to the conduct of County business.
- (4) Lodging expenses for non-county personnel are NOT reimbursable except when special circumstances are noted and approved in advance by the Chief Administrative Office. Otherwise, such expenses must be part of a service contract in order to be paid.

4. Mode of Transport

- a. Transportation shall be by the least expensive and/or most reasonable means available.
- b. Private auto reimbursement may be authorized by the department head for county business travel within county and out of county. Reimbursement shall not be authorized for commuting to and from the employee's residence and the employee's main assigned work site, unless required by an executed Memorandum of Understanding between the County and a representing labor organization, or one-time, special circumstances approved by a department head.
- c. Out of county travel by county vehicle or private vehicle may be authorized if the final destination of the trip does not exceed a four (4) hour driving distance from the County offices. Any exception to this policy must receive



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BOARD OF SUPERVISORS POLICY

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prior approval from the Chief Administrative Officer. If air travel would be more economical, but the employee prefers to drive even though travel by car would not be in the County's best interest, the County will reimburse transportation equal to the air travel; transportation costs over and above that amount, as well as any extra days of lodging and meals, etc., will be considered a personal, not reimbursable cost of the traveler.

- d. Common carrier travel must be in "Coach" class unless otherwise specifically authorized in advance by the Chief Administrative Officer. Generally, any costs over and above coach class shall be considered a personal, not reimbursable expense of the traveler.

- (1) Rental cars may be used as part of a trip using public transportation if use of a rental car provides the most economical and practical means of travel. The use of a rental car must be noted on the Travel Authorization in advance and authorized by the Department Head and Chief Administrative Officer. Justification for the use of the rental car must accompany that request. Rental car costs will not be reimbursed without prior authorization except in the case of emergencies. Exceptions may be granted at the sole discretion of the Chief Administrative Officer or designated CAO staff.

5. Reimbursement Rates

- a. Maximum rates for reimbursement may not be exceeded unless due to special circumstances documented by the department head and approved by the Chief Administrative Officer. The amount of any reimbursement



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BOARD OF SUPERVISORS POLICY

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above the maximum shall be at the sole discretion of the Chief Administrative Officer.

b. Private Auto

Travel by private auto in the performance of "official County business" shall be reimbursed at the Federal rate as determined by the Internal Revenue Service.

Mileage for travel shall be computed from the employee's designated work place. If travel begins from the employee's residence, mileage shall be calculated from the residence or work place, whichever is less. (For example, an employee who lives in Cameron Park and drives to a meeting in Sacramento, leaving from the residence will be paid for mileage from the residence to Sacramento and back to the residence.)

The mileage reimbursement rate represents full reimbursement, excluding snow chain installation and removal fee, for expenses incurred by a County officer or employee (e.g., fuel, normal wear and tear, insurance, etc.) during the use of a personal vehicle in the course of service to El Dorado County.

c. Meals

Actual meal expenses, within maximum allowable rates set forth below, may be reimbursed routinely out-of-county travel, and for in-county overnight travel. Meals will not be provided for in-county travel or meetings which do not involve overnight lodging, unless special circumstances are involved such as the following:



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BOARD OF SUPERVISORS POLICY

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- (1) When meals are approved as part of a program for special training sessions, conferences, and workshops;
- (2) when employees traveling from the western slope of the county to Lake Tahoe and vice-versa are required to spend the entire work day at that location;
- (3) when the Director of Human Resources deems it appropriate to provide meals to a Human Resources interview panel;
- (4) when Senior Managers and/or Executives of El Dorado County or the El Dorado County Water Agency meet with executives of other governmental agencies, community organizations, or private companies in a breakfast, lunch or dinner setting in order to conduct County business. While such meetings are discouraged unless absolutely necessary to the efficient conduct of County or Water Agency business, such expenses for County managers require approval by the Chief Administrative Officer.

Actual costs of meals may be reimbursed up to a total of \$40 per day without regard to how much is spent on individual meals (e.g., breakfast, lunch, dinner, snacks), and without receipts. If an employee is on travel status for less than a full day, costs may be reimbursed for individual meals within the rates shown below.

Breakfasts may be reimbursed only if an employee's travel consists of at least 2 hours in duration before an employee's regular work hours. Dinner



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may be reimbursed if travel consists of at least 2 hours in duration after an employee's regular work hours.

**Maximum Allowable Meal Reimbursement**

Breakfast	\$8.00
Lunch	\$12.00
Dinner	\$20.00
Total for full day	\$40.00/day

d. Lodging

- (1) Lodging within county may be authorized by a department head if assigned activities require an employee to spend one or more nights in an area of the county which is distant from their place of residence (e.g., western slope employee assigned to 2-day activity in South Lake Tahoe).
- (2) Lodging may be reimbursed up to \$125 per night, plus tax, single occupancy. The Chief Administrative Office may approve extraordinary costs above these limits on a case by case basis when the responsible department head and Chief Administrative Office determine that higher cost is unavoidable, or is in the best interest of the County.
- (3) Single rates shall prevail except when the room is occupied by more than one County employee. However, nothing in this policy shall be construed to require employees to share sleeping accommodations



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while traveling on County business. In all travel, employees are expected to secure overnight accommodations as economically as possible and practical.

- (4) Lodging arrangements should be made, whenever possible and practicable, at hotels/motels which offer a government discount, will waive charges to counties for Transient Occupancy Tax, or at which the County has established an account. When staying at such a facility, the name of the employee and the department must appear on the receipt of the hotel/motel bill.

e. Other Expenses

All other reasonable and necessary expenses (i.e., parking, shuttle, taxi, etc.) will be reimbursed at cost if a receipt is submitted with the claim. Receipts are required except for those charges where receipts are not customarily issued, for example, bridge tolls and snow chain installation and removal fees. When specific cost guidelines are not provided by the county, reasonableness of the expense shall be considered by the department head and Chief Administrative Officer before deciding whether to approve.

Reasonable costs for snow chain installation and removal may be claimed and reimbursed. The purchase cost of snow chains would not be an allowable charge against the county.

6. Advance Payments



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The Auditor may provide advance funds for estimated "out of pocket" expenses up to seventy-five percent (75%), but no less than \$50.00. The "out of pocket" expenses may include meals, taxi and public transportation, lodging, parking, and pre-registration costs.

7. Compliance - Claimant Responsibility

It is the responsibility of the claimant to understand and follow all policies and procedures herein in order to receive reimbursement for mileage, travel and expense claims. Any form completed improperly or procedure not followed may result in the return of a claim without reimbursement.

8. Procedures:

- a. Authorization to incur expenses must be obtained as set forth in this County policy, and as may be directed by the department.
- b. Requests for advance funds for anticipated travel expenses itemized on the Travel Authorization Request form are obtained by indicating this need on that form prior to processing the request.
- c. Forms which require Chief Administrative Office approval should be submitted to the Chief Administrative Office, after department head approval, at least 7 to 10 days prior to travel to allow time for processing through County Administration and Auditor's Department.
- d. Cancellation of travel, requires that any advanced funds be returned to the Auditor Controller's office within five (5) working days of the scheduled



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departure date. If the advance is not returned within this time frame, the employee could jeopardize their standing to receive advances in the future.

- e. Travel Claims are due to the Auditor within 30 days after completion of travel. Personal Mileage and Expense Claims are due to the Auditor within 15 days after the end of each calendar month. The due date may be extended if deemed appropriate by the County Auditor. Claims must itemize expenses as indicated on claim forms, and must be processed with **receipts attached**.
- f. Reimbursements will be provided expeditiously by the County Auditor upon receipt of properly completed claim forms. The Auditor's Office shall promptly review claims to determine completeness, and if found incomplete, will return the request to the claimant noting the areas of deficiency.
- g. Personal Mileage and Expense Claim forms should be completed for each calendar month, one month per claim form. These monthly claims are due to the Auditor within 15 days following the month end; however, the deadline may be extended if deemed appropriate by the County Auditor. If monthly amounts to be claimed are too small to warrant processing at the end of a month (i.e., if cost of processing would exceed the amount being claimed), the claims for an individual may be accumulated and processed in a batch when a reasonable claim amount has accrued. In any event, such claims shall be made and submitted to the County Auditor for accounting and payment within the same fiscal year as the expense was incurred.
- h. Expense Claim Form





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For the purpose of travel and meeting expenses, the claim form is to be used for payments to vendors. The employee must obtain Department Head approval and submit the claim to the Auditor's Office within sixty (60) days of the incurred expense.

## **EXHIBIT "B"**

### **HIPAA Business Associate Agreement**

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

#### **RECITALS**

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Obligations of County.

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

6. Term and Termination.

- A. Term – this Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the Contractor, the County shall either:
  - (1) Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County.
  - (2) Immediately terminate this Agreement if the Contractor has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
  - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the Contractor shall return or destroy all PHI received from the County, created or received by the Contractor on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Contractor.

Contractor shall retain no copies of the PHI.

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

7. **HIPAA Business Associate Indemnity**

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

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

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

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

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

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

8. Amendment – the parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival – the respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References – a reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts – any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

Dated: 4/28/06

Dated: 5/1/06

Signed: John Litwinovich  
John Litwinovich  
Director  
Human Services Department

Signed: Carol Heape  
Carol Heape  
President  
Elder Options, Inc.