

Agenda

County of Inyo Board of Supervisors

Board of Supervisors Room
County Administrative Center
224 North Edwards
Independence, California

All members of the public are encouraged to participate in the discussion of any items on the Agenda. Anyone wishing to speak, please obtain a card from the Board Clerk and indicate each item you would like to discuss. Return the completed card to the Board Clerk before the Board considers the item (s) upon which you wish to speak. You will be allowed to speak about each item before the Board takes action on it.

Any member of the public may also make comments during the scheduled "Public Comment" period on this agenda concerning any subject related to the Board of Supervisors or County Government. No card needs to be submitted in order to speak during the "Public Comment" period.

Public Notices: (1) In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at (760) 878-0373. (28 CFR 35.102-35.104 ADA Title II). Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. Should you because of a disability require appropriate alternative formatting of this agenda, please notify the Clerk of the Board 72 hours prior to the meeting to enable the County to make the agenda available in a reasonable alternative format. (Government Code Section 54954.2). (2) If a writing, that is a public record relating to an agenda item for an open session of a regular meeting of the Board of Supervisors, is distributed less than 72 hours prior to the meeting, the writing shall be available for public inspection at the Office of the Clerk of the Board of Supervisors, 224 N. Edwards, Independence, California and is available per Government Code § 54957.5(b)(1).

Note: Historically the Board does break for lunch, the timing of a lunch break is made at the discretion of the Chairperson and at the Board's convenience.

November 26, 2013

8:30 a.m. 1. PUBLIC COMMENT

CLOSED SESSION

- 2. CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].** Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Elected Officials Assistant Association (EOAA) - Negotiators: Information Services Director Brandon Shults and Labor Relations Administrator Sue Dishon.
- 3. REPORT ON CLOSED SESSION AS REQUIRED BY LAW.**

OPEN SESSION

10:00 a.m. PLEDGE OF ALLEGIANCE

- 4. PUBLIC COMMENT**
- 5. COUNTY DEPARTMENT REPORTS (Reports limited to two minutes)**

CONSENT AGENDA (Approval recommended by the County Administrator)

COUNTY ADMINISTRATOR

- 6. Personnel – Request A) approval of Amendment No. 2 to the Agreement between the County of Inyo and Jeffrey Thomson for personal services as a County Officer, for a salary of \$9,592 per month, effective December 5, 2013; and authorize the Chairperson to sign; and B) approve a resolution titled "A Resolution of the Board of Supervisors, County of Inyo, State of California, Amending Resolution 2006-06 Changing Salary and/or Terms and Conditions of Employment for Appointed Officials Employed in the Several Offices or Institutions of the County."**

DISTRICT ATTORNEY

- 7. Request approval of the Inyo County Victim Witness Assistance Program Grant from the Governor's Office of Emergency Services for FY 2013-2014; and authorize the District Attorney to sign any documentation to accept and utilize the grant on behalf of Inyo County.**

PROBATION

8. Request approval of Amendment One to the Lease between Inyo County and Satellite Tracking of People LLC (STOP) for providing electronic monitoring supplies and services by increasing the amount by \$10,000 to an amount not to exceed \$20,000; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.

PUBLIC WORKS

9. Request approval of the Plans and Specifications for the Big Pine Town Hall ADA Ramp Project and authorize the Public Works Director to advertise and bid the Project.

DEPARTMENTAL (To be considered at the Board's convenience)

10. **HEALTH AND HUMAN SERVICES – Social Services** – Request Board find that consistent with the adopted Authorized Position Review Policy: A) the availability of funding for the position of Prevention Specialist exists in the Social Services, Tobacco and Substance Use Disorders budgets, as certified by the Director of Health and Human Services, and concurred with by the County Administrator and Auditor-Controller; B) where if the County was facing layoffs, the position could be filled by internal candidates meeting the qualifications for the position, but since no layoffs are pending, an open recruitment would be appropriate to ensure qualified applicants apply and C) approve the hiring of one Prevention Specialist at Range 60 (\$3,336 – \$4,052).
11. **HEALTH AND HUMAN SERVICES – Health Services** – Request Board ratify and approve the Contract between the County of Inyo and the California Department of Public Health for the provision of immunization outreach for the period of July 2, 103 through June 30, 2017, in the amount of \$112,544, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign the Contract and the Contractor Certification Clause.
12. **HEALTH AND HUMAN SERVICES – Health Services** – Request Board ratify and approve the Agreement No. 12-20129 between the County of Inyo and the California Department of Public Health for the provision of HIV surveillance services for the period of July 1, 2013 through June 30, 2016, in the amount of \$15,156, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign the Agreement, Certification regarding Lobbying, Contractor Certification and the Darfur Contracting Act Certifications.
13. **ROAD DEPARTMENT** – Request Board ratify and approve the Lease Agreement between the County of Inyo and the Los Angeles Department of Water and Power for the Sunland Borrow Pit, for the period October 1, 2012 through September 30, 2017, at the yearly rate of \$500, \$515, \$530, \$546, and \$574 respectively.
14. **COUNTY ADMINISTRATOR – Emergency Services** – Request Board discuss and consider Staff's recommendation regarding continuation of the local emergency, The Death Valley Roadeater Emergency, that resulted in flooding in the eastern portion of Inyo County during the month of August 2012, per Resolution #2012-32.
15. **COUNTY ADMINISTRATOR – Emergency Services** - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Gully Washer Emergency, that resulted in flooding in the central, south and southeastern portion of Inyo County during the month of July, 2013.
16. **COUNTY ADMINISTRATOR – Emergency Services** - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Canyon Crusher Emergency, that resulted in flooding in portions of Inyo County during the month of August, 2013.
17. **CHILD SUPPORT SERVICES** – Request Board accept a presentation on the Eastern Sierra Child Support Program.

TIMED ITEMS (Items will not be considered before scheduled time)

- 10:15 a.m. 18. **COUNTY ADMINISTRATOR – Film Commission** – Request Board accept the Film Commissioner's Mid-Year Report.

CORRESPONDENCE - ACTION

BOARD MEMBERS AND STAFF REPORTS

COMMENT (Portion of the Agenda when the Board takes comment from the public and County staff)

19. **PUBLIC COMMENT**

CORRESPONDENCE - INFORMATIONAL

20. **ENVIRONMENTAL HEALTH** – Proposition 65 Report of diesel spill at the site of a traffic collision.
21. **SHERIFF'S DEPARTMENT** – Sheriff and Jail Overtime Report for the month of October 2013.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER 6
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Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: County Administrator - Personnel

FOR THE BOARD MEETING OF November 26, 2013

SUBJECT: AMENDMENT TO PERSONAL SERVICES CONTRACT

DEPARTMENTAL RECOMMENDATION:

Request Board 1) Approve Amendment Number 2 to the Agreement between County of Inyo and Jeffrey Thomson for personal services as a County Officer, for a salary of \$9,592.00 per month, effective December 5, 2013 and authorize the Chairperson to sign, and 2) Approve Resolution 2013-_____ entitled "A Resolution of the Board of Supervisors, County of Inyo, State of California, Amending Resolution 2006-06 Changing Salary and/ Or Terms and Conditions of Employment for Appointed Officials Employed in the Several Offices or Institutions of the County of Inyo."

SUMMARY DISCUSSION:

Following negotiations with the Chief Probation Officer, the Board of Supervisors made a tentative offer to the Chief for a salary increase of 10% and an increase of administrative leave from 40 hours to 80 hours, subject to his formal acceptance and final Board approval in the next public meeting. This amendment reflects the tentative offer. This amendment is presented to your Board for final consideration and action.

ALTERNATIVES:

Your Board could choose to not approve this amendment and re-negotiate the terms and conditions.

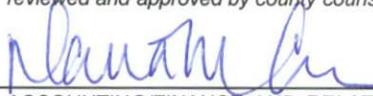
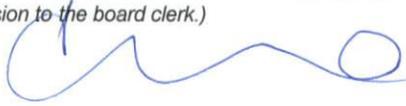
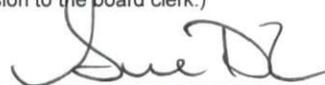
OTHER AGENCY INVOLVEMENT:

County Counsel
Personnel

FINANCING:

The costs associated with this amendment will be paid for out of the Probation Department budget 023000.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11/19/13</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11/19/2013</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)  Approved: <u>✓</u> Date <u>11/19/13</u>

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

Kevin Carunchio by _____ Date: 11/19/13



RESOLUTION NO. 2013-_____

**A RESOLUTION OF THE BOARD OF SUPERVISORS, COUNTY OF INYO,
STATE OF CALIFORNIA, AMENDING RESOLUTION 2006-06 CHANGING SALARY AND/OR
TERMS AND CONDITIONS OF EMPLOYMENT FOR APPOINTED OFFICIALS EMPLOYED IN
THE SEVERAL OFFICES OR INSTITUTIONS OF THE COUNTY OF INYO**

WHEREAS, the Board of Supervisors, pursuant to Government Code Section 25300, shall prescribe the compensation of all County Officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of all County employees; and

WHEREAS, Appointed Officers are employees of the County of Inyo; and

WHEREAS, the Board of Supervisors desires to change the compensation, tenure, appointment and/or conditions of employment for Appointed County Officials;

NOW THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby amends Article 7a of Resolution 2006-06 to read as follows:

ARTICLE 7. SALARIES

A. Salaries

Appointed Officials shall be paid a monthly salary as set forth in the schedule below:

Appointed Officers	November 7, 2013 thru December 4, 2013	December 5, 2013 and on
Ag Comm/Weights and Measures	\$8,364.00	\$8,364.00
Chief Probation Officer	\$8,720.00	\$9,592.00
Child Support Director	\$8,415.00	\$8,415.00
County Administrator	\$13,465.00	\$13,465.00
County Counsel	\$12,240.00	\$12,240.00
Environmental Health Director	\$8,956.00	\$8,956.00
Health and Human Services Director	\$10,478.00	\$10,478.00
Planning Director	\$9,200.00	\$9,200.00
Public Works Director	\$11,051.00	\$11,051.00
Water Director	\$9,445.00	\$9,445.00

PASSED AND ADOPTED this 26th of November, 2013 following vote of the Inyo County Board of Supervisors:

AYES:
NOES:
ABSTAIN:
ABSENT:

Chairperson Inyo County Board of Supervisors

Attest: Kevin Carunchio
Clerk of the Board

BY: _____
Patricia Gunsolley, Assistant

AMENDMENT NUMBER 2 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Jeffrey Thomson FOR THE PROVISION OF
PERSONAL SERVICES AS COUNTY OFFICER

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Jeffrey Thomson, of BISHOP, CA (hereinafter referred to as "Officer"), have entered into an Agreement for the Provision of Personal Services dated November 4, 2008, on County of Inyo Standard Contract No. 205, for an indefinite term commencing November 4, 2008 to Termination.

WHEREAS, County and Officer do desire and consent to amend such Agreement as set forth below;

WHEREAS, such agreement provides that it may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties thereto, if such amendment or change is in written form, and executed with the same formalities as such Agreement, and attached to the original Agreement to maintain continuity.

NOW THEREFORE, County and Officer hereby amend the Agreement as follows:

1. "Subject to Paragraph 3 of Attachment B, County will pay Officer a salary of Nine Thousand Five Hundred and Ninety Two Dollars (\$9,592.00) per month.

Attachment B. Schedule Fees, Paragraph 5 is hereby added to read as follows in its entirety:

4. "Officer is entitled to eighty paid administrative hours off every fiscal year. The administrative leave hours shall not accumulate and will be lost if not utilized during the fiscal year. The administrative leave shall have no cash value."

The effective date of this amendment to the Agreement is December 5, 2013.

All the other terms and conditions of the Agreement are unchanged and remain the same.

\\\\\\ NOTHING FOLLOWS \\\\\\

AMENDMENT NUMBER 2 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Jeffrey Thomson FOR THE PROVISION OF
PERSONAL SERVICES AS COUNTY OFFICER

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
_____ DAY OF _____.

COUNTY OF INYO

OFFICER

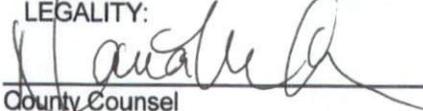
By: _____

By:  _____

Dated: _____

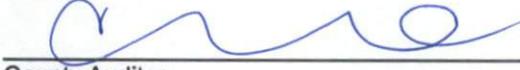
Dated: 11/20/13 _____

APPROVED AS TO FORM AND
LEGALITY:



County Counsel

APPROVED AS TO ACCOUNTING
FORM:



County Auditor

APPROVED AS TO PERSONNEL
REQUIREMENTS:

Personnel Services

Contracts200Series/ElectedOfficials/ThomsonAmnd2.205

AMENDMENT NUMBER 2 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Jeffrey Thomson FOR THE PROVISION OF
PERSONAL SERVICES AS COUNTY OFFICER

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
_____ DAY OF _____.

COUNTY OF INYO

OFFICER

By: _____

By: _____

Dated: _____

Dated: _____

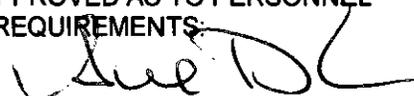
APPROVED AS TO FORM AND
LEGALITY:

County Counsel

APPROVED AS TO ACCOUNTING
FORM:

County Auditor

APPROVED AS TO PERSONNEL
REQUIREMENTS:



Personnel Services

Contracts200Series/ElectedOfficials/ThomsonAmnd2.205



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER
7

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Thomas L. Hardy, District Attorney

FOR THE BOARD MEETING OF: November 26, 2013

SUBJECT: Governor's Office of Emergency Services (CalOES) – Victim/Witness Assistance Program Grant acceptance.

DEPARTMENTAL RECOMMENDATION:

- A) Request Board Authorize acceptance of the Inyo County Victim Witness Assistance Program (VW13 22 0140) Grant from the Governor's Office of Emergency Services (CalOES) for Fiscal Year 2013/2014, contingent upon adoption of the Fiscal Year 2013/2014 budget.
- B) Authorize District Attorney, Thomas L. Hardy to sign any documentation to accept and utilized the grant on behalf of the County.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This is the (23rd) twenty-third consecutive year we have applied for and been offered this grant.

The grant total is \$74,033. The Victim/Witness Assistance Program augments the services provided by the Office of the District Attorney including crisis intervention, emergency assistance, resource assistance, follow-up counseling, victim compensation, property return, orientation to the criminal justice system, court escort and support, presentation to criminal justice, victim service providers and the media, case status reports, notification of family and friends, employer notification, restitution assistance, creditor intervention, child care assistance, witness notification, funeral arrangement assistance, crime prevention information, temporary restraining order assistance, transportation, and court waiting area.

Service is provided to victims of all types of crime upon request, not only crimes prosecuted by the District Attorney. Contact is made in person, by letter, telephone and by field visits. The goal of the Victim/Witness Assistance Program is to help victims of crime proceed through the criminal justice system and their victimization with a sense of understanding and participation in the process with a resulting empowerment to become a survivor; no longer a victim.

We respectfully request your consideration of acceptance of this grant, which along with the Victim/Witness Unserved/Underserved Grant funds the (2) two Victim/Witness Advocates salaries and benefits. Further, this year we are able to fund approximately 32% of the District Attorney Office Assistant's salary and benefits to save the general fund.

ALTERNATIVES:

Without your Board's acceptance of the grant the project would be terminated.

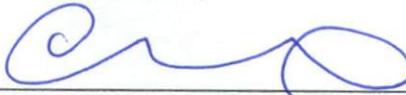
OTHER AGENCY INVOLVEMENT:

Inyo Sheriff's Department, Inyo Child and Adult Protective Services, Inyo County Probation Department, Bishop Police Department, California Highway Patrol, and Wild Iris Women's Services.

FINANCING:

Grant amount is \$74,033. Budget Number 602413. The County expends funds and then a claim is made to the State for reimbursement.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <input checked="" type="checkbox"/> Date <u>10/28/13</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <input checked="" type="checkbox"/> Date <u>11/1/2013</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 11-13-13



October 21, 2013

Arthur J. Maillet, District Attorney
Inyo County
P.O. Box Drawer D
Independence, CA 93526

RECEIVED
OCT 24 2013
Inyo District Attorney
Independence

Subject: **NOTIFICATION OF APPLICATION APPROVAL**
Victim/Witness Assistance Program
Award #: VW13 22 0140, Cal OES ID: 027-00000

Dear Mr. Maillet:

Congratulations! The California Governor's Office of Emergency Services (Cal OES) has approved your application in the amount of \$74,033, subject to Budget approval. A copy of your approved subgrant is enclosed for your records.

Cal OES will make every effort to process payment requests within 60 days of receipt.

This subgrant is subject to the Cal OES Recipient Handbook. You are encouraged to read and familiarize yourself with the Cal OES Recipient Handbook, which can be viewed on Cal OES website at www.caloes.ca.gov.

Any funds received in excess of current needs, approved amounts, or those found owed as a result of a close-out or audit, must be refunded to the State within 30 days upon receipt of an invoice from Cal OES.

Should you have questions on your subgrant, please contact your Program Specialist.

PSVS Grant Processing

Enclosure

c: Recipient's file

(Cal OES Use Only)

Cal OES# 027-00000-16 FIPS# 027-00000 VS _____ CFDA# _____ Grant# UC 13220140

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES 58597-MAIL 4
GRANT AWARD FACE SHEET (Cal OES 2-101)

The California Governor's Office of Emergency Services hereafter designated Cal OES, hereby makes a Grant Award of funds to the following

1. Grant Recipient: INYO COUNTY 1a. DUNS# 010706687

In the amount and for the purpose and duration set forth in this Grant Award.

2. Implementing Agency: INYO COUNTY DISTRICT ATTORNEY 2a. DUNS# 010706687

3. Implementing Agency Address: POST OFFICE DRAWER D INDEPENDENCE 93526-0000
Street City Zip+4

4. Location of Project: BISHOP/INDEPENDENCE INYO 93514-0000
City County Zip+4

5. Disaster/Program Title: VICTIM WITNESS ASSISTANCE 6. Performance Period: 07/01/13 to 06/30/14

Grant Year	Fund Source	A. State	B. Federal	C. Total	D. Cash Match	E. In-Kind Match	F. Total Match	G. Total Project Cost
2013	7. VWA0	\$43,765					\$0	\$43,765
2013	8. VOCA		\$30,268				\$0	\$30,268
Select	9. Select						\$0	\$0
Select	10. Select						\$0	\$0
Select	11. Select						\$0	\$0
	12. TOTALS	\$43,765	\$30,268	\$74,033	\$0	\$0	\$0	\$74,033
								12b. Total Project Cost:

13. This Grant Award consists of this title page, the application for the grant, which is attached and made a part hereof, and the Assurances/Certifications. I hereby certify I am vested with the authority to enter into this Grant Award Agreement, and have the approval of the City/County Financial Officer, City Manager, County Administrator, Governing Board Chair, or other Approving Body. The Grant Recipient certifies that all funds received pursuant to this agreement will be spent exclusively on the purposes specified in the Grant Award. The Grant Recipient accepts this Grant Award and agrees to administer the grant project in accordance with the Grant Award as well as all applicable state and federal laws, audit requirements, federal program guidelines, and Cal OES policy and program guidance. The Grant Recipient further agrees that the allocation of funds may be contingent on the enactment of the State Budget.

14. Official Authorized to Sign for Applicant/Grant Recipient: _____ 15. Federal Employer ID Number: 95-600544

Name: ARTHUR J. MAILLET Title: DISTRICT ATTORNEY

Telephone: 760 873-6669 (area code) FAX: 760 873-8359 (area code) Email: amaillet@inyocounty.us

Payment Mailing Address: POST OFFICE DRAWER D City: INDEPENDENCE Zip+4: 93526-0000 ⁰⁰⁰⁴⁶⁷

Signature: [Signature] Date: 07/01/2013

(FOR Cal OES USE ONLY)

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purposes of this expenditure stated above.

Sara Stillwell 10/16/13 [Signature] 10/12/13
Cal OES Fiscal Officer Date Cal OES Director (or designee) Date

Yr: 2013/14 / Chapter: 20 / PCA No: 14250
Item: 0690-102-0425 Fed Cat. #: N/A
Component: 40.20.101
Program: Victim/Witness Assistance Program
Fund: Victim Witness Assistance
Match Req.: N/A
Project No.: 13VWA0 Amount: \$43,765

Yr: 2013/14 / Chapter: 20 PCA No: 18203
Item: 0690-102-0890 Fed Cat. #: 16.575
Component: 40.20.451
Program: Victim/Witness Assistance Program
Fund: Federal Trust
Match Req.: 20% C/IK based on TPC match met by VWA Funds
Project No.: 13 VOCA Amount: \$30,268



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
8

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Probation Department – AB109 Criminal Realignment

FOR THE BOARD MEETING OF: November 26, 2013

SUBJECT: Approval of Agreement for Electronic Monitoring Supplies and Services

DEPARTMENTAL RECOMMENDATION: Request Board approve Amendment One to the Lease Agreement between Inyo County Probation and Satellite Tracking of People LLC (STOP) of Houston, Texas for providing electronic monitoring supplies and services by increasing the "not to exceed" amount from \$10,000 to \$20,000 and authorize the Chairperson to sign Amendment One contingent upon receipt of appropriate signatures.

CAO RECOMMENDATION:

SUMMARY DISCUSSION: In Fiscal Year 2012/2013, your Board approved the local Community Corrections Partnership (CCP) Plan in accordance with the Public Safety and Realignment Act of 2011, along with designating the Probation Department as the Supervising Entity for post-release community supervision of new state prison parolees. In addition, in accordance with Assembly Bill 109: Criminal Justice Alignment [Public Safety and Realignment Act of 2011 (AB109)], which shifted incarceration of inmates convicted of offenses deemed non-serious, non-violent and non-sexual offenders to County jails and supervision of those offenders to the Probation Department, a CCP Executive Committee was designated, chaired by the Chief Probation Officer, to make recommendations to the Board of Supervisors on how to spend AB109 monies.

Specifically, AB109 legislation required each county to develop its own implementation plan on how best to utilize sanctions and evidence-based practices to improve services and reduce recidivism. Within the approved CCP Plan, several treatment and alternative sentence programs were outlined, one of which is the electronic monitoring/remote alcohol monitoring program, which implements alternative sentence to the traditional local jail term for violations of probation or lower level offenders. This program, in collaboration with the Inyo County Sheriff's Department, utilizes **GPS technology** to both track an offender's whereabouts and design specific "exclusion zones," or areas that offender is prohibited from entering, such as bars, school zones or areas in which victims reside to minimize the potential for contact and re-offense. **Radio Frequency (RF) monitoring** utilizes radio frequencies generated by both an ankle bracelet type unit and a base unit that is placed in the offenders' residence creating virtual confinement of the offender to their home. And, **remote alcohol monitoring** utilizes a transdermal alcohol detection system within a unit that is attached to the offenders' leg.

Implementation of an electronic monitoring/remote alcohol monitoring program has many significant benefits to the supervision of local offenders and has application at all levels of the local criminal justice system. For the Inyo County Jail, the program is utilized at a pre-trial level, whereby the courts have the option of placing low to moderate risk offenders on electronic monitoring or remote alcohol monitoring to alleviate overcrowding by offenders who historically utilize significant jail bed space while awaiting trial or settlement of their cases. Additionally, low to

moderate risk offenders, both misdemeanor and felony level, who historically utilized significant jail beds while serving sentences between 30 and 90 days are placed on electronic monitoring as an alternative, with the additional benefit that they are in certain cases required to participate in treatment at the same time. Fiscally, existing SB 678 dollars were utilized to implement the electronic monitoring program in 2012 at a cost of less than \$10,000.

After obtaining and reviewing electronic monitoring proposals from STOP, BI Incorporated and Pro Tech Monitoring, Inc., the Probation Department entered into an Agreement with STOP on April 1, 2012 in the amount not to exceed \$10,000. After County Counsel review, County Administrative Office Kevin Carunchio approved entering into the agreement per the County's purchasing policy. In addition, this agreement would renew automatically each year.

As mentioned in the CCP Plan, electronic monitoring program is used for both Adult and Juvenile Offenders and Inyo County would have the option to charge offenders for this service, thereby permitting the recuperation of some of the cost for the program. Monitoring is provided through the STOP website of all activity of the Offender. In the Adult Division, Offenders pay for the cost to have electronic monitoring based on a sliding scale. Monies collected from the Adult Offenders pay for almost all of the costs for said program and the remaining expenses are covered with AB109 Criminal Realignment monies. In the Juvenile Division, the cost for a Juvenile to participate in the electronic monitoring program is funded entirely through the Youth Offender Block Grant (YOBG). However, in certain Juvenile cases, a Juvenile may be charged \$1.00 a day. Adult Offenders make up the majority of participants in this program. Although the Probation Department and Sheriff's Department are currently able to absorb the impact of the new electronic monitoring caseload with existing staff, as the realignment population grew and use of electronic monitoring increased, the Probation Department has had to specifically assign an Adult Deputy Probation Officer to handle electronic monitoring participants. As a result, this has increased responsibilities on to the other Adult Deputy Probation Officers.

What we have seen is that this program is very effective as it allows an Offender to continue to work and participate in treatment programs, while paying for their electronic monitoring device costs and removes them from the Jail facility. As the participant level has increased, on average, the cost per month is approximately \$1,700 total paid to STOP for their equipment and services. Invoices are paid monthly out of the corresponding budget, monies are collected weekly from the Offender, and quarterly AB109 monies and/or YOBG monies reimburse the corresponding budget. Due to the increase in participants and therefore an increase in monthly cost, it is anticipated that we will reach the \$10,000 not to exceed amount within the next month.

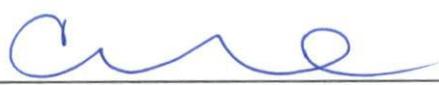
Probation respectfully requests that your Board approve Amendment One to the Lease Agreement by increasing the "not to exceed" amount from \$10,000 to \$20,000 and authorize the Chairperson to sign Amendment One contingent upon receipt of appropriate signatures.

ALTERNATIVES: Your Board could choose to not approve increasing the Agreement amount; however, this is not recommended as the electronic monitoring program has benefitted the County, the Public, and the Sheriff's Jail Facility.

OTHER AGENCY INVOLVEMENT: N/A

FINANCING: Monies have been budgeted within the Probation Budget 023000 and Juvenile Institutions Budget 023100, within the Professional Services Expenditure Object Code 5265.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11.1.13</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11/4/2013</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:  Date: 11/5/13
(Not to be signed until all approvals are received)

cc: Original Lease Agreement
Amendment One

LEASE AGREEMENT

This Lease Agreement is made on this 1st day of April, 2012 referred to herein as "Effective Date" by and between SATELLITE TRACKING OF PEOPLE LLC ("Lessor") and Inyo County (Probation) California ("Lessee").

In consideration of the mutual promises contained herein and the receipt of other good and valuable considerations, the parties agree as follows:

Scope of Work:

- Lessee desires to have the ability to electronically monitor certain individuals.
- Lessor desires to lease to Lessee certain equipment and services as set forth in Exhibit A.
- Title to all leased equipment shall remain with Lessor. Lessee is not purchasing any of the equipment set forth in Exhibit A. Instead, such equipment is being leased by Lessee solely for its use in the United States to assist in tracking the location of designated individuals (referred to herein as "Individuals").
- Lessee will promptly return all leased equipment to Lessor upon expiration of the lease term in its original condition, reasonable wear and tear excepted.

Agreement Term and Renewal: This Agreement shall begin on the Effective Date defined above and shall continue for the period of one (1) year, during which time Lessor provides the services set forth in Exhibit A, unless terminated or renewed as provided herein ("Initial Term"). Following the Initial Term, this Agreement, its terms and conditions and authorized amendments will renew automatically for succeeding periods of one (1) year each on the anniversary of the Effective Date unless otherwise terminated as provided herein.

Payment: Lessor shall submit to Lessee, once a month, an itemized statement of all services and work described in Exhibit A, which were requested by Lessee. This statement will be submitted to Lessee not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. Upon timely receipt of the statement by the fifth (5th) day of the month, Lessee shall make payment to Lessor on the last day of the month. If the statement is not timely received, Lessee shall make payment to Lessor on the last day of the following month.

Limit Upon Amount Payable Under Agreement: The total sum of all payments made by the Lessee in any one year for services performed under this Agreement shall not exceed Ten Thousand (\$10,000) Dollars. Lessee expressly reserves the right to deny any payment or reimbursement requested by Lessor for services or work performed which is in excess of the above amount.

Shipping: Unless otherwise agree to by Lessor, shipping of equipment will be done in accordance with Lessor's standard shipping terms of 2nd day delivery processed the day following receipt of the order. Lessor is responsible for paying for the cost associated with the shipping of leased equipment to and from Lessee's designated delivery location. Lessor will pay shipping costs for faulty equipment returned for repair and replacement.

Lessee's Obligations: In addition to any obligations and responsibilities otherwise noted herein, Lessee understands and acknowledges that during the term of this Agreement and any renewals thereof, it has complete authority and responsibility for (a) the selection, management and administration of Individuals, including but not limited to monitoring, (b) designating the monitoring level for all individuals monitored with the leased equipment, and, (c) establishing alert notification protocols and parameters.

Proprietary Property: Title to any Intellectual Property, leased equipment, including its replacements, and all components of such equipment and replacements, including any software, shall not pass to Lessee as a result of this Agreement. Leased equipment may only be serviced and/or repaired by Lessor. As an attribute of the equipment lease and for only so long as such lease is not terminated or expired, Lessor grants to Lessee a personal, non-exclusive, and non-transferable license under certain U.S. Patents and other intellectual property rights, hereinafter "INTELLECTUAL PROPERTY," that Lessor has the right to license, such INTELLECTUAL PROPERTY pertaining to the leased equipment, including any software, and the intended use of such leased equipment. This license shall only extend to Lessee's use of the leased equipment as specified herein and for no other purpose. This license shall also extend only to that equipment whose lease from Lessor has not terminated or expired. Notwithstanding any provision herein to the contrary, this license shall not be assignable or transferable by Lessee. In consideration of this license and as a requirement of the lease, Lessee agrees that it will not decompile, disassemble or otherwise reverse engineer the leased equipment, including any software, or cause or allow others to do so. Lessee will not modify, or cause or allow others, to modify the leased equipment and software, without the prior written consent of Lessor. Lessor or a professional audit firm selected by Lessor shall have the right, at Lessor's expense, to enter Lessee's premises during times and dates reasonably agreed upon by Lessee and Lessor, and make a reasonable examination of Lessee's records, the leased equipment and other things as may be necessary to verify that Lessee is abiding by the terms and conditions of this Agreement.

Non-Infringement of Intellectual Property: Lessor warrants that neither the products, processes, computer software, software modules, media, documentation and other materials provided to Lessee under this Agreement will infringe or constitute an infringement of any U.S. copyright, U.S. patent, U.S. trademark or other proprietary right of a third party. Should any such items become the subject of an infringement claim or suit, Lessor may obtain for Lessee the right to continue using such items or may replace or modify them to make them non-infringing. If Lessor, in its sole discretion, does not believe that either of these alternatives is reasonable, Lessor may require Lessee to stop using such items and Lessee agrees to immediately cease all infringing use.

Nondisclosure: The parties hereto agree to protect all confidential proprietary information provided by one party to the other, and not to publish or disclose the other party's information to any third party without the other's written permission. The term proprietary information means confidential materials, documents, data and other information which Lessor or Lessee has designated or marked as proprietary and confidential. Neither Lessor nor Lessee will be required to protect proprietary information, which is or becomes publicly available, (other than as a result of a breach of this Agreement) is independently developed by such party outside the scope of this Agreement, or is rightfully obtained from third parties.

Warranties, Disclaimers and Indemnification: Lessee is entitled to any warranties on leased equipment provided by the manufacturer of such equipment and which can be assigned to Lessee. Lessor makes no other warranties regarding the products or services provided hereunder, express or implied, and Lessor specifically excludes any warranty of merchantability and fitness of its products and services for a particular purpose. Lessor expressly disclaims any warranty that its monitoring service or its system is impervious to tampering. In no event will Lessor be liable for any direct, indirect, special, consequential or incidental damages in connection with or arising out of the providing, performance or use of the products or services provided under this Agreement. Lessee acknowledges that neither the equipment nor services provided herein shall prevent, and that neither is it intended to prevent, any individual from committing any harmful, tortuous, or illegal acts. Lessee further acknowledges that it may be possible for an individual to remove the equipment by unauthorized means, and that Lessor expressly disclaims any liability for any harmful, tortuous, or illegal acts committed by the individual. In no event does Lessor assume or bear any responsibility or liability for acts that may be committed by third Parties or persons subject to or using products or services. The parties hereto shall not be liable for any failure or delay in performance hereunder which is due to Force Majeure. For purposes of this Section, Force Majeure shall mean any event beyond the reasonable control of the parties, including, without limitation, failures of computers, computer-related equipment, hardware or software, network service coverage, fire, flood, riots, strikes, epidemics, war (declared or undeclared and including the continuance, expansion or new outbreak of any war or conflict now in existence), embargoes and governmental actions or decrees.

Notwithstanding anything to the contrary in this Agreement, Lessor will reimburse Lessee for reasonable costs from a final judgment in a court of law ruling the damage was proximately caused by Lessor's equipment. To the extent permitted by federal and state law, Lessee shall indemnify and hold harmless Lessor for matters that involve designating levels of monitoring for each individual and any claim, injury, loss, damage or expense arising out of willful and intentional acts of individuals.

Miscellaneous Provisions: Continued Performance: When this Agreement terminates, both parties will continue to comply with all of the terms of this Agreement which call for performance prior or subsequent to the termination date, including their respective obligations to protect confidential proprietary information. **Breach and Non-payment Termination:** In the event a breach of this Agreement occurs by either party for any reason, including non-payment, then the non-breaching party shall notify the party in breach who shall then have fifteen (15) calendar days to cure said breach. In the event of a failure to cure, the non-breaching party, in addition to exercising any other rights or remedies that may be available, may terminate this Agreement upon twenty-four (24) hours notice. The occurrence of any of the following events shall constitute an Event of Default or Breach under this Agreement: (i) Either party fails to comply with any other term, condition or covenant contained in this Agreement and does not cure that failure as specified herein; (ii) A petition in bankruptcy is filed by or against either party or a receiver or trustee of any property of either party is appointed, (iii) Either party is dissolved, liquidated or terminated, or either party ceases its ongoing business operations, sales activity of Support Services, without prior written consent of the other party, (iv) Any act or omission of either party, which adversely affects the reputation of the other; (v) The passage of any legislation which would impair or jeopardize the ability of Lessor to maintain Lessor's proprietary rights in the Intellectual Property for the products and services covered by this Agreement. **Statute of Limitations:** the parties hereby agree that the statute of limitations for any action for fault hereunder by either party, including for breach of warranty or indemnity, shall be one (1) year after a cause of action accrues. **Venue:** This Agreement shall be governed, interpreted and construed under the laws of the State of California. **No Third Party Beneficiaries:** This Agreement is intended for the exclusive benefit of Lessor, Lessee and their permitted affiliates and assigns and is not intended and shall not be construed as conferring any benefit on any third party or the general public. **Successors:** this Agreement shall be binding upon the respective successors, affiliates and assigns of the parties. **Modifications and Waivers:** if either party waives or modifies any term or condition of this Agreement, this will not void, waive or change any other term or condition. If either party waives a default by the other, this will not waive future or other defaults. If any part of this Agreement, for any reason is declared to be invalid, it shall be deemed modified as necessary to be valid. The remainder of this Agreement shall continue in effect as if the Agreement has been entered without the invalid portion. **Entire Agreement:** This Agreement sets forth the full understanding between the parties and may only be changed in writing, duly executed by both Parties. **Acknowledgement:** The parties acknowledge that they have had an opportunity to fully examine this Agreement and completely understand its terms, and that they approve the same including all of the terms and conditions.

Exhibit A attached is made a part of this Agreement as if fully included in the text.

In witness whereof, each of the parties has executed this Agreement as of the date and year first set forth herein.

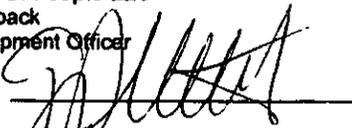
Lessor:

Satellite Tracking Of People LLC

Name: Greg Utterback

Title: Chief Development Officer

Signature:



Lessee:

Entity Name: Inyo County Probation Department

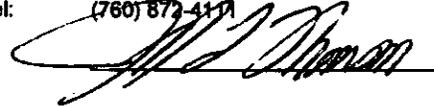
Contact Name: Chief Probation Officer Jeffrey Thomson

Address: 918 Main Street

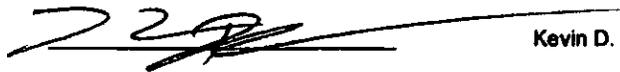
Bishop, CA 93514

Contact Tel: (760) 872-4111

Signature:



Signature:



Kevin D. Carunchio, County Administrative Officer

EXHIBIT A

Unit Pricing

Category	Volume Tiers *	Price
Radio Frequency – Landline	1 +	\$1.75/day/unit
Radio Frequency – Cellular	1 +	\$2.60/day/unit
Passive GPS	1 +	\$4.00/day/unit
Hybrid GPS	1 +	\$4.99/day/unit
Active GPS	1+	\$5.25/day/unit
STOP Monitoring Center		\$0.75/day/unit
BluHome		No Charge
BluBox		No Charge
MEMS Landline	1+	\$5.00
MEMS Cellular	1+	\$6.50
SCRAMx	1 +	\$9.00

*Live 24/7/365 Monitoring Center services for use with STOP monitoring equipment. Our personnel receive event notifications and manage events according to agency's monitoring protocol.

Insurance and Replacement Costs: In the event of damage to the unit caused by the tracked individuals or LESSEE, or if the unit is lost, the LESSEE will reimburse LESSOR based on the Replacement Cost listed below. In lieu of LESSEE paying for lost/damaged units, LESSEE may elect below to purchase insurance at the per diem noted below to provide no-deductible coverage up to 15% of the average daily units billed during the preceding twelve (12) months. Any lost or damaged units above this amount will be billed in accordance with the Replacement Cost below. Election for insurance coverage must be made at the beginning of the Agreement, and remains in effect during the term of the Agreement for all billable units. Regardless of whether insurance coverage is elected, LESSEE shall use its best efforts to recover all units on behalf of LESSOR. LESSOR may terminate this Agreement if lost or damaged units from this Agreement exceed 20% of the average daily units activated.

- Insurance Cost
- Additional \$.50 per BluTag unit per day.
 - Additional \$.25 per BluBand unit per day.
 - Insurance is not available for accessories, including BluHome, BluBox, BluFone, or BluScan.

Electing Insurance Coverage (must check one): Yes No

Replacement Cost

Part	Description	Quantity	Replacement Cost
1	BluTag® Unit	1	\$ 500 ¹
2	BluHome® Unit (if applicable)	1	\$ 350 ¹
3	BluBox® (if applicable)	1	\$ 200 ¹
4	BluFone® (if applicable)	1	\$ 200 ¹
5	Straps and direct clips for BluTag® (set comprised of one strap and four clips)	9 per unit per year	\$ 10
6	Charging Coupler for BluTag®	1	\$ 25
7	BluScan® (if applicable)	1	\$ 350
8	BluBand ®	1	\$ 125
9	Installation Kit	1	\$ 25

Notes: 1 - Replacement only for lost and stolen units. Units are not available for purchase. Data and wireless plan included.

EXHIBIT B – SCRAM

CUSTOMER NAME: Inyo County Probation Department

DATE: 5/29/2012

SCRAM Unit Pricing:

Volume Discounts:

1 – 49	\$8.28
50 – 149	\$7.38
150 – 499	\$7.03
500 +	\$6.88

Spare Allowance and Charges:

20% spare inventory allowance. \$2.50/day charge per unit in stock above spare allowance.

SCRAM Special Conditions:

1. If the SCRAM device reports likely alcohol abuse, a secondary test from another testing source should be considered.
2. Replacement costs:
 - a. SCRAM Transmitter \$1,650.00
 - b. Base Station \$ 500.00

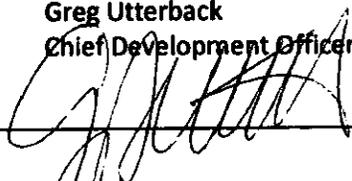
All other terms and conditions of the original Agreement dated April 1, 2012 remain in force and effect.

In witness whereof, each of the parties has executed this Agreement as of the date and year first set forth herein.

Lessor:

Satellite Tracking of People LLC

Name: Greg Utterback
Title: Chief Development Officer

Signature:  _____

Lessee/Customer:

Entity: Inyo County Probation Department
Contact Name: Jeffrey Thomson
Title: Chief Probation Officer
Address: 918 Main Street
Bishop, CA 93514
Contact Tel: (760) 872-4111
Contact Email: jthomson@inyocounty.us

Signature:  _____

**AMENDMENT NUMBER ONE (1) TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
SATELLITE TRACKING OF PEOPLE, LLC
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and SATELLITE TRACKING OF PEOPLE, LLC, of HOUSTON, TEXAS (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated APRIL 1, 2012, on County of Inyo Standard Contract No. N/A, for the term from APRIL 1, 2012 to UNTIL TERMINATED.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

WHEREAS, such Agreement provides that it may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties thereto, if such amendment or change is in written form, and executed with the same formalities as such Agreement, and attached to the original Agreement to maintain continuity.

County and Contractor hereby amend such Agreement as follows:

Amend the Satellite Tracking of People, LLC Lease Agreement with the County of Inyo Probation Department for electronic monitor supplies and services as follows:

Payment: (Page 1 of Lease Agreement) Limit Upon Amount Payable Under Agreement: The total sum of all payments made by the Lessee in any one year for services performed under this Agreement shall not exceed Twenty Thousand (\$20,000) Dollars.

The effective date of this Amendment to the Agreement is November, 2013.

All the other terms and conditions of the Agreement are unchanged and remain the same.

AMENDMENT NUMBER ONE (1) TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
SATELLITE TRACKING OF PEOPLE, LLC
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
____ DAY OF _____, _____.

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By: _____
Signature

Type or Print

Dated: _____

APPROVED AS TO FORM AND LEGALITY:

County Counsel

APPROVED AS TO ACCOUNTING FORM:


County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

Personnel Services

APPROVED AS TO RISK ASSESSMENT:

County Risk Manager



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER
9

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Public Works

FOR THE BOARD MEETING OF: November 26, 2013

SUBJECT: Big Pine Town Hall Americans with Disabilities Act (ADA) Ramp Project

DEPARTMENTAL RECOMMENDATION:

1. Recommend the Board approve the plans and specifications for the Big Pine Town Hall ADA Ramp Project; and,
2. Authorize the Public Works Director to advertise and bid the Project.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Inyo County Elections Department applied for and has been awarded the Help America Vote Act (HAVA) Accessibility Grant from the California Secretary of State in the amount of \$30,000. The grant designates needed funds to retrofit historically used polling places to comply with both Federal and State Accessibility guidelines, including ADA-compliant ramps and polling booths. An ideal candidate for the grant included the Big Pine Town Hall, located at 150 Dewey Street, Big Pine, CA. This project will request bids from contractors to construct a custom built ADA ramp for the front entrance of Big Pine Town Hall, leading to a marked ADA-compliant van-accessible parking spot. The project will benefit Inyo County by allowing a previously accessibility non-compliant publicly used building to become ADA accessible and satisfy the requirements set by Americans with Disabilities Act of 1990, 2010 Revised Standards. If the funds are not used prior to July 1, 2014, they will no longer be available.

ALTERNATIVES:

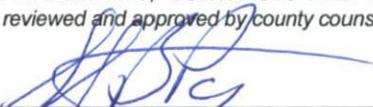
Not approve the plans, specifications, and advertisement of the project. This is not recommended because current HAVA project funds are in place to construct this ADA ramp.

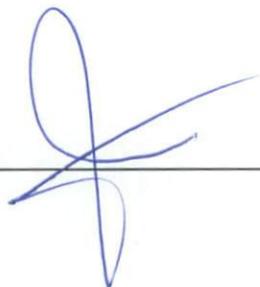
OTHER AGENCY INVOLVEMENT:

The Public Works Department for the development of the plans, specifications and bid package.

FINANCING:

Public Works will be providing the service of executing and choosing bid packages by State and Federal Standards. The funding will be provided by the HAVA Polling Place Accessibility Surveyor Training Program, under FY 2013/14 & 2014/15, Object Code No. 023401, Project No/Grant 13G26109, in an amount not to exceed \$30,000. Sufficient funds to cover reimbursements Grant funds be forwarded from the Secretary of state and will be in the 2013/14 & 2014/15 Preliminary Recorder's Budget as per the contract agreement.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11/14/2013</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11/15/2013</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: <u>N/A</u> Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)  Date: 11/15/13



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER 10

- Consent Hearing Departmental Correspondence Action Public
 Scheduled Time for Closed Session Informational

FROM: HEALTH & HUMAN SERVICES

FOR THE BOARD MEETING OF: November 26, 2013

SUBJECT: Request to hire one full time Prevention Specialist in the HHS Prevention Division

DEPARTMENTAL RECOMMENDATION:

Request Board find that consistent with the adopted Authorized Position Review Policy:

- A) The availability of funding for the position of Prevention Specialist exists in the Social Services, Tobacco and Substance Use Disorders (SUD) Budgets, as certified by the Health and Human Services Director, and concurred with by the County Administrator and the Auditor-Controller; and
- B) Where if the county was facing layoffs, the position could be filled by internal candidates meeting the qualifications for the position, but since no layoffs are pending, an open recruitment would be appropriate to ensure qualified applicants apply; and
- C) Approve the hiring of one Prevention Specialist at Range 60 (\$3,336-\$4,052).

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This Prevention Specialist position was recently vacated, as the staff member accepted another position in Health and Human Services. As part of the Child Welfare System Improvement Plan, child welfare, probation and other community partners identified the need for parenting classes focused on parents of school-aged children and teens in order to strengthen and support our Inyo County families. The classes have been set up as part of a continuum of the Inyo First 5 parenting classes for children ages 0-5, using the same parenting curriculum in English and in Spanish.

Additionally, in order to help implement community wellness, the Prevention Specialist will, under the supervision of his or her supervisor, be utilizing strategies focusing on nutrition, exercise, education and on other healthy prevention activities for our residents using Substance Use Disorders (SUD) and Tobacco funding. The position will benefit all of our HHS divisions need for prevention and wellness education to the public.

ALTERNATIVES:

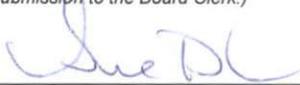
Your Board could choose not to approve the filling of this position which would prevent HHS from providing parenting classes that were identified in our Child Welfare System Improvement Plan and would limit implementation of HHS wellness programs and activities, and other SUD and Tobacco education and prevention for our families.

OTHER AGENCY INVOLVEMENT:

Probation and all HHS divisions.

FINANCING:

Social Services 2011 Realignment Funding (Child Abuse and Prevention Subcategory), Tobacco State Funding and Federal Substance Use Disorder funding. This position is budgeted 50% in Social Services (055800), 40% in Tobacco (640313) and 10% in SUD (045315) in the Salaries and Benefits object codes. No County General Funds.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.) Approved: _____ Date: _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)  Approved: <u>yes</u> Date: <u>11/14/2013</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)  Approved: <u>✓</u> Date: <u>11/13/13</u>
BUDGET OFFICER:	BUDGET AND RELATED ITEMS (Must be reviewed and approved by the Budget Officer prior to submission to the Board Clerk.) Approved: _____ Date: _____

DEPARTMENT HEAD SIGNATURE:  Date: 11-18-13
 (Not to be signed until all approvals are received)



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER 11

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Health & Human Services/Public Health

FOR THE BOARD MEETING OF: November 26, 2013

SUBJECT: Contract between the County of Inyo and the California Department of Public Health for Immunization Outreach Program

DEPARTMENTAL RECOMMENDATION:

Request the Board ratify the contract between the County of Inyo and the California Department of Public Health for the provision of Immunization Outreach in an amount not to exceed \$112,544.00 for the period of July 1, 2013 through June 30, 2017, contingent upon Board's approval of future budgets, and authorize the Chairperson to sign the Standard Agreement and the Contractor Certification Clause.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This contract was received from California Department of Public Health on October 25, 2013 and the routing process was initiated upon receipt.

The Immunization Outreach Program coordinates program planning and implements strategies to improve the immunization levels of children within Inyo County. Program staff participate in outreach activities through collaboration with community groups, childcare providers, schools and other groups targeting children and adolescents. In addition, the Immunization nurse works with nursing homes and employers to develop and implement strategies for the promotion of influenza vaccination to all ages. The program staff assist in the countywide implementation of the immunization registry and assist in supporting the efforts of the medical community.

ALTERNATIVES:

Not accepting the funding would result in reduction in services to the targeted population that may otherwise not access services.

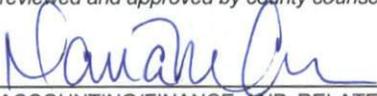
OTHER AGENCY INVOLVEMENT:

Local schools, private medical providers, other programs in Health and Human Services such as WIC and Social Services

FINANCING:

Total funding for this program is \$112,544.00, \$28,136 in FY 13/14; \$28,136 in FY 14/15; \$28,136 in FY 15/16 and \$28,136 in FY 16/17 and is recognized as revenue in the Health Budget (045100).

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11-7-13</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11/12/2013</u>
PERSONNEL DIRECTOR: N/A	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

 ^{DE}

Date: 11/13/13

REGISTRATION NUMBER	AGREEMENT NUMBER 13-20330
---------------------	------------------------------

- This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME California Department of Public Health	(Also referred to as CDPH or the State)
CONTRACTOR'S NAME County of Inyo	(Also referred to as Contractor)
- The term of this Agreement is: July 1, 2013 through June 30, 2017
- The maximum amount of this Agreement is: \$ 112,544
One Hundred Twelve Thousand Five Hundred Forty-Four
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	12 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit B, Attachment I – Budget (Year 1)	1 page
Exhibit B, Attachment II – Budget (Year 2)	1 page
Exhibit B, Attachment III – Budget (Year 3)	1 page
Exhibit B, Attachment IV – Budget (Year 4)	1 page
Exhibit C * – General Terms and Conditions	<u>GTC 610</u>
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)	23 pages
Exhibit E – Additional Provisions	3 pages
Exhibit F – Contractor's Release	1 page

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) County of Inyo		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 207 A West South Street, Bishop, CA 93514		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Public Health		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Elizabeth Stone, Chief, Contracts Management Unit		
ADDRESS 1616 Capitol Avenue, Suite 74.317, MS 1802, PO Box 997377 Sacramento, CA 95899-7377		

Exempt per:

EXHIBIT A
Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Public Health (CDPH) the services described herein:

Sections 120325-120380 of the Health & Safety Code, Chapter 435, require immunizations against childhood diseases prior to school admittance. Local Health Department Health Officers are required to organize and maintain a program to make the required immunizations available. This contract assists the Contractor in defraying costs of the program which supports the State's objectives to control diseases that are preventable by vaccines. It is the California Department of Public Health's (CDPH) responsibility to provide this assistance to local health jurisdictions. The Contractor is to conduct a general immunization program which provides the general public with vaccines recommended by the Advisory Committee on Immunization Practices (ACIP). In addition, the Contractor identifies target populations in need of immunizations and initiates corrective action to improve immunization levels.

2 Project Representatives

A. The project representatives during the term of this agreement will be:

California Department of Public Health

Rossana B. Anglo-Ordonez
Telephone: (510) 620-3768
Fax: (510) 620-3774
Email: rossana.ordonez@cdph.ca.gov

County of Inyo

Contact: Tamara Cohn
Telephone: 760/873-7868
Fax: 760/873-7800
Email: tcohn@inyocounty.us

B. Direct all inquiries to:

California Department of Public Health

Immunization Branch
Attention: Souk Mouanoutoua
Field Representative
3374 E. Shields Avenue #C20
Fresno, CA 93726

Telephone: 559/228-5855
Fax: 559/228-5862
Email: Souk.Mouanoutoua@cdph.ca.gov

County of Inyo

County of Inyo
Attention: Tamara Cohn
207A West South Street
Bishop, CA 93514

Telephone: 760/873-7868
Fax: 760/873-7800
Email: tcohn@inyocounty.us

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

EXHIBIT A
Scope of Work

3. Glossary of Acronyms

Abbreviation	Definition
ACIP	Advisory Committee on Immunization Practices
CAIR	California Immunization Registry
CDPH	California Department of Public Health
CoCASA	Clinic Assessment Software Application
HBsAg	Hepatitis B Surface Antigen
HBV	Hepatitis B Vaccine
HDAS	Health Department Authorized Sites
LHD	Local Health Department
LHJ	Local Health Jurisdiction
PEP	Post Exposure Prophylaxis
QAR	Quality Assurance Reviews
VFC	Vaccines for Children Program
VPDs	Vaccine Preventable Disease(s)

4. Services to be Performed – Pediatric-IAP

The County of Inyo must agree to the following inclusive objectives and conduct the following activities. Many of the services to be performed are also objectives and activities required by the Federal Government and are conditions for funding of the California Immunization Program and/or statutory requirements of State and local health departments. The level of subvention contract funding to be awarded is not represented as sufficient for support of all the required activities; a significant amount of local support and funding is expected. Subvention contract funds must not be used to supplant (i.e., replace) local funds currently being expended for routine immunization services and activities.

A. Objectives:

1) Program Management

Objective 1: To improve accountability, maximize efficiency and increase productivity under this contract.

EXHIBIT A
Scope of Work

a. Required Activities:

- i. Contractor agrees to assign the responsibility of monitoring each program activity: 1) Program Management; 2) Vaccine Accountability and Management; 3) Vaccine Availability; 4) Immunization Information Systems; 5) Provider Quality Assurance and Improvement; 6) Perinatal Hepatitis B Prevention; 7) Education, Information, Training, and Partnerships; 8) Prevention, Surveillance and Control of Vaccine Preventable Disease; and 9) Assessment of Compliance with Childcare and School Immunization Entry Requirements.
- ii. Monitor contract fund expenditures to maximize the utilization of the funding for achieving the goals and objectives. Contract invoices shall be reviewed and submitted to the CDPH Immunization Branch in a timely manner.
- iii. Facilitate and promote continuity of care through the utilization of a medical home among medically underserved children, adolescents and adults for all services including immunizations.
- iv. The Immunization Coordinator is required to participate in meetings, webinars and conference calls as requested by the CDPH Immunization Branch including, but not limited to, the CDPH Immunization Branch's Annual Immunization Coordinators' Meeting, New Immunization Coordinator Orientation (offered annually and required for all new Immunization Coordinators), and conference calls related to influenza, outbreak control, changes in policies and procedures, and other important issues. It is recommended that at least one staff member from the jurisdiction attend the annual Regional Coordinators' meeting.
- v. Provide desk space and basic support for CDPH Immunization Field staff if available and as requested by CDPH.
- vi. Submit quarterly Immunization Action Plan (IAP) contract reports by the 15th of the month following the end of the quarter.

b. Performance Measures:

- i. Thoroughness and timeliness of Quarterly Progress Reports submitted
- ii. Percentage of immunization funds expended

c. Reporting Requirements:

- i. IAP contract reports.

2) Vaccine Accountability and Management

Objective 1: With the assistance of the CDPH Immunization Branch, the contractor is to provide guidance to Local Health Department (LHD) facilities and Health Department Authorized Sites (HDAS) that receive State-supplied vaccine to facilitate compliance with current protocols, policies, and procedures for vaccine storage and handling in accordance with manufacturers' specifications and as stated in the document: *VFC Participation Agreement and Certification of Capacity to Store Vaccines*.

a. Required Activities:

- i. Provide education and guidance to LHD facility and HDAS staff regarding the requirements stated in the above document as needed.

EXHIBIT A
Scope of Work

b. Suggested Activities:

- i. Promote best practices for the storage and handling of vaccines.

c. Performance Measures:

- i. Percentage of VFC Requirements being met, as measured by the Quality Assurance Visits conducted by CDPH Immunization Branch Representatives.

d. Reporting Requirements:

- i. Education activities developed and offered to LHD and HDAS.

Objective 2: The contractor will provide guidance to LHD facilities and HDAS that receive State-supplied vaccine to facilitate compliance with current protocols, policies, and procedures for vaccine accountability including: ordering; patient eligibility screening; administration; waste minimization; dose accountability and reporting; and annual recertification requirements, as stated in the following documents:

- Policy for Provision of State-funded Vaccines to Privately Insured Patients by Local Health Department Jurisdictions.
- Vaccine Eligibility Guidelines for Health Department and CDPH Approved Health Department Authorized Sites (HDAS)

a. Required Activities:

- i. Provide education and guidance to LHD and HDAS facility staff regarding the requirements stated in the above documents as needed.
- ii. Facilitate the development and implementation of Corrective Action Plans for vaccine loss/waste incidents due to negligence in LHD facilities and HDAS as requested by the CDPH Immunization Branch.
- iii. Notify the CDPH Immunization Branch of suspected acts of fraud and/or abuse of State-supplied vaccine within the jurisdiction.
- iv. Provide guidance to LHD and HDAS staff regarding requirements and processes for dose-level tracking/accountability and reporting of State-supplied vaccine.

b. Suggested Activities:

- i. Assist in the management of State-supplied vaccine within the jurisdiction by assisting providers with transferring excess inventory or short-dated vaccine to other providers who could utilize the vaccine and providing guidance on the transfer of the vaccine and required documentation.

c. Performance Measures:

- i. Percentage of doses ordered by vaccine type that were deemed non-viable due to expiration and/or improper storage and handling.
- ii. Number of vaccine storage and handling incidents and vaccine dose accountability reports.

d. Reporting Requirements:

- i. Corrective action plans and implemented progress reports

EXHIBIT A
Scope of Work

3) Vaccine Availability

Objective: The contractor will promote access to ACIP-recommended vaccines for children, adolescents and adults throughout the jurisdiction in LHD facilities and HDAS.

a. Required Activities:

- i. Ensure that immunization services are provided directly by the LHD and/or identify, authorize and monitor community-based health care agencies to provide immunization services as described in the *Clinic Services Document*.
- ii. Assist LHD facilities and HDAS receiving State-supplied vaccine in developing and implementing policies that specify that no charge may be made to the patient, parent, guardian or third party payer for the cost of the State-supplied vaccine. If a vaccine administration fee is charged, it may not exceed the maximum established by policy and a sliding scale/fee waiver process must be in place. Signage stating that those persons eligible to receive State-supplied vaccine may not be denied vaccine for failure to pay the administration fee or make a donation to the provider must be posted in a prominent location.
- iii. In collaboration with LHD facilities and HDAS, monitor and facilitate compliance with requirements for the use of State-supplied vaccine.
- iv. Develop and implement an annual influenza vaccination strategy for utilization of State-supplied Influenza vaccine in accordance with State Influenza eligibility guidelines to promote the distribution of vaccine throughout the jurisdiction utilizing LHD facilities, HDAS and mass vaccination clinics.
- v. Operate or support mass influenza clinics that include immunization of school-aged children.

<u>Total population of jurisdiction</u>	<u>Minimum number of children to be immunized</u>
<10,0000	50
10,000-50,000	200
100,000-500,000	500
>500,000-3.5 million	1,000
>3.5 million	2,500

- vi. Participate in CDPH Immunization Branch statewide Flu and Immunization Update calls.
- vii. Directly provide and/or work with community partners to implement special targeted vaccination initiatives as directed by the CDPH Immunization Branch such as new legislatively-required vaccines for school entry and mass vaccination/outbreak control activities.
- viii. Develop and make available to the public a resource list of providers within the jurisdiction that provide low/no cost immunizations for children and adults.

b. Suggested Activities:

- i. Utilize existing local data and/or conduct assessments to identify low or lagging vaccination coverage levels for specific populations and/or specific vaccines (i.e., pockets of need) within the jurisdiction and develop and conduct activities to reduce these disparities.

EXHIBIT A
Scope of Work

- ii. Promote participation in the VFC Program to other jurisdictional facilities that provide immunizations (.e.g., primary care, juvenile halls, community and school-based clinics and private providers).

c. Performance Measures:

- i. Number of operating LHD facilities and HDAS, along with immunizations at each location.
- ii. Mass vaccination clinic outcomes.

d. Reporting Requirements:

- i. Number and hours of operating sites.
- ii. Number of immunizations provided with state-funded vaccines and costs to patient.
- iii. Doses of influenza administered, age groups of recipients, and clinic settings for mass influenza clinics.

4) Immunization Information Systems

Objective: The contractor is to assist in the promotion and implementation of the California Immunization Registry (CAIR).

a. Required Activities:

- i. Require LHD Immunization Clinics to enter all patients into CAIR either through weekly direct entry or bi-weekly electronic data upload (with the exception of outreach-based Flu vaccinations, which should be entered into CAIR as soon as possible and at least within a month of vaccination).
- ii. Assist the CDPH Immunization Branch with addressing CAIR issues in LHD Immunization Clinics including areas such as frequency of use, data quality, and adherence to policies and procedures.
- iii. Promote CAIR to pediatric VFC and non-VFC providers during general immunization outreach and education activities and refer interested providers to the CDPH Immunization Branch.
- iv. Refer participating CAIR providers needing assistance to the CAIR Help Desk for support.
- v. Participate in CAIR Trainings and/or CAIR Update meetings.

b. Suggested Activities:

- i. Assist in recruiting other LHD-based facilities that give immunizations to use CAIR including child cares, sexually transmitted disease clinics, juvenile halls/jails, primary care services, etc. and assist CDPH Immunization Branch address implementation issues within these settings.
- ii. Promote CAIR to adolescent and adult medical providers as well as non-medical sites such as WIC agencies and schools within the jurisdiction.
- iii. Provide space for CAIR user trainings if available and requested by the CDPH Immunization Branch.
- iv. Assist with distributing CAIR provider materials (e.g., Reminder/Recall postcards).

EXHIBIT A
Scope of Work

c. Performance Measures:

- i. Percentage of LHD Immunization Clinics entering all patients into CAIR according to established timeframes.
- ii. Participation in CAIR Trainings and/or CAIR Update meetings, if offered.

d. Reporting Requirements:

- i. Percentage of LHD clinics entering records into CAIR, along with timeframes of entry is completed.

5) Provider Quality Assurance and Improvement

Objective: To improve the quality and efficiency of immunization services, participate in Quality Assurance Review (QAR) visits to assess adherence to the Standards for Child and Adolescent Immunization Practices.

a. Required Activities:

- i. In conjunction with the CDPH Immunization Branch, participate in and support the QAR process for all LHD facilities and HDAS within the jurisdiction and assist with the development of the QAR report, implementation of corrective action plans, strategies to reduce missed opportunities for vaccination, and linkage/referral to medical homes.
- ii. As directed by the CDPH Immunization Branch, conduct follow-up visits with LHD facilities and HDAS to provide assistance with implementation of mandatory corrective action plans.

b. Suggested Activities:

- i. Conduct QAR and educational visits at public and private VFC sites to improve the delivery and quality of immunization services within the jurisdiction.
- ii. Maintain a database to monitor changes in immunization coverage and missed opportunities for providers that participate in the assessment.
- iii. Provide instructions and/or referral to the CAIR website to providers requesting guidance on using Clinic Assessment Software Application (CoCASA) for determining immunization coverage and missed opportunity rates.
- iv. Assist and support the VFC Program with conducting QAR visits and follow-up activities as requested.

c. Performance Measures:

- i. Percentage of immunization rate assessments completed for those facilities designated for assessment.
- ii. Feedback sessions conducted with sites needing additional support

d. Reporting Requirements:

- i. QAR and CoCASA Reports submitted to the CDPH Immunization Branch Senior Field Representative.

EXHIBIT A
Scope of Work

6) Education, Information, Training, and Partnerships

Objective 1: Expand immunization services, promote best practices and improve coverage rates among children, adolescents and adults within the jurisdiction through the development of partnerships and collaborative activities.

a. Required Activities:

- i. Develop and maintain partnerships and conduct collaborative activities with organizations and community groups serving children, adolescents, adults to expand immunization services, promote best practices and improve coverage rates. Organizations include, but are not limited to, hospitals and birthing facilities, child care providers, schools, juvenile/adult correction facilities, WIC and other social service agencies, nursing homes, home health agencies, colleges/adult schools and medical associations/organizations.

b. Suggested Activities:

- i. Participate in local and state immunization coalitions, task forces and work groups such as the California Immunization Coalition (CIC).

c. Performance Measures:

- i. Number of new partnerships developed.
- ii. Number and type of activities conducted with new and existing partnerships, coalitions, task forces and/or workgroups.

d. Reporting Requirements:

- i. Report the number of new partnerships developed.
- ii. Report by number and type of activities conducted with new and existing partnerships, coalitions, task forces and/or workgroups.

Objective 2: Provide and/or promote education and training opportunities, materials, and information to health care providers, schools and childcare centers, community organizations, and the general public within the jurisdiction to promote best practices for immunization and raise awareness about the importance of immunizations.

a. Required Activities:

- i. Serve as the immunization expert and resource within the jurisdiction for healthcare providers, schools, community organizations and the general public.
- ii. Provide information on available education and training resources available through the Centers for Disease Control and Prevention (CDC), State and local health department such as such as EZIZ modules and the Epidemiology and Prevention of Vaccine Preventable Diseases (Epi-Vac) course to facilitate the orientation and training of new LHD Immunization Program staff.
- iii. Promote and encourage providers/organizations to sign up for EZIZ list-serve to receive information on upcoming educational/training opportunities and immunization-related news.
- iv. Collaborate with CDPH Immunization Branch to notify healthcare providers and other organizations within the jurisdiction about critical immunization information such as changes in the ACIP schedule and new laws/requirements.

EXHIBIT A
Scope of Work

- v. Order, stock and disseminate materials available through the Immunization Coordinators' website to providers, schools and other immunization stakeholders within the jurisdiction.
- vi. Conduct at least one annual community-wide educational campaign on immunization issues related to pediatric, adolescent, adults and/or seasonal influenza.

NOTE: A *campaign* is an organized effort through various communications activities to inform your designated audience (i.e. pregnant women, parents of preteens, providers, etc.) of a given issue (e.g. influenza vaccine promotion, encourage Tdap vaccination among pregnant women, etc.).

A campaign is considered completed by conducting at least two of the following communication activities:

- Send educational email(s) to immunization stakeholders, such as school nurses, provider groups, LHD staff, WIC, Head Start, etc.
- Contribute an article to newsletters/bulletins
- Distribute materials to stakeholders, such as schools, youth programs, providers, WIC, MCAH, etc.
- Distribute materials for use at community health fairs/events
- Post message(s) on Facebook, Twitter
- Post a web banner on your website and/or signature line
- Advertise your message (outdoor advertising, print, radio, TV, Online)
- Conduct a health fair or other community event
- Conduct a presentation for grand round/In-service for providers
- Speak at a school assembly, PTA meeting, classroom, or at a parent-teacher night
- Conduct a presentation for a community group (e.g. prenatal class)
- Conduct a press event
- Issue a press release
- Issue a proclamation
- Participate in a media interview

NOTE: If you would like assistance or need ideas on other activities that will qualify for a campaign, please contact the Information & Education Section of the CDPH Immunization Branch.

b. Suggested Activities:

- i. Conduct presentations, workshops, trainings and/or contribute articles to provider newsletters on immunization-related topics to health care providers and other organizations about pediatric, adolescent and adult immunization issues including, but not limited to, ACIP recommendations, best practices, new vaccines, vaccine storage and handling, vaccine safety, VAERS reporting, vaccination documentation requirements.
- ii. Promote and/or implement activities supporting official national and/or statewide immunization campaigns (observances) such as Preteen Vaccine Week (PVW), National Infant Immunization Week/Toddler Immunization Month (NIIW/TIM),

EXHIBIT A
Scope of Work

National Adult Immunization Awareness Week (NAIAW), National Immunization Awareness Month (NIAM), and National Influenza Vaccine Week (NIVW).

- iii. Conduct education and awareness activities targeted to parents and the general public promoting vaccine safety, efficacy and importance of recommended immunizations.
- iv. Provide and regularly maintain accurate website content and web links on vaccine preventable disease and immunizations representing pediatric, adolescent and adult issues and resources.

c. Performance Measures:

- i. Number of new immunization program staff completing training, and types of training completed
- ii. Number of LHD immunization clinic staff completing training, and types of training completed
- iii. Number and type of notifications sent to health care providers and other organizations.
- iv. Number and type of presentations/workshops/trainings provided
- v. Number and type of children, adolescent, adult and/or influenza campaigns conducted. Describe immunization issue, audience and communication activities conducted.

d. Reporting Requirements:

- i. Report the number of new immunization program staff completing training, and types of training completed
- ii. Report the number of LHD immunization clinic staff completing training, and types of training completed
- iii. Report the number and type of notifications sent to health care providers and other organizations.
- iv. Report the number and type of presentations/workshops/trainings provided
- v. Report the number and type of children, adolescent, adult and/or influenza campaigns conducted.

7) Prevention, Surveillance and Control of Vaccine Preventable Disease (VPD)

Objective: Assist with the prevention, surveillance and control of vaccine preventable disease (VPD) within the jurisdiction.

a. Required Activities:

- i. Work collaboratively with LHD Communicable Disease Control staff and the CDPH Immunization Branch to address VPD outbreaks within the jurisdiction including: securing vaccine to immunize at risk patients; assisting with the organization and implementation of efforts to vaccinate susceptible individuals; developing and disseminating messages to inform the public of the outbreak, prevention and availability of vaccine; organizing outreach events as needed; performing vaccine accountability and management; and reporting vaccine utilization.

EXHIBIT A
Scope of Work

- ii. Ensure that LHD Immunization Clinics are knowledgeable about and utilize the Vaccine Adverse Events Reporting System (VAERS) for reporting adverse events following immunizations in accordance with CDPH Immunization Branch guidelines.

b. Suggested Activities:

- i. Support the maintenance of an effective system for identification and reporting of suspect, probable and confirmed cases of VPDs following the guidelines set forth by Title 17.
- ii. Support the investigation and follow-up of reported suspect, probable and confirmed VPDs following the guidelines set forth by the CDC and CDPH Immunization Branch.

c. Performance Measures:

- i. Percentage of cases reported and followed up according to established timelines.

d. Reporting Requirements:

- i. Report on activities done with communicable disease staff on outbreaks.

8) Assessment of Compliance with Childcare and School Immunization Entry Requirements

Objective: Assist the CDPH Immunization Branch with assessing compliance with Child Care and School Immunization Entry Requirements according to CDPH Immunization Branch guidelines and instructions.

a. Required Activities:

- i. Based on information available, review and update childcare and school contact lists sent by the CDPH Immunization Branch.
- ii. Based on lists provided by the CDPH Immunization Branch, follow-up with childcare and school sites that do not complete the electronic Fall Assessment.
- iii. As requested, conduct selective review site visits to a random sample of child care centers, kindergartens, and/or seventh-grade schools (cohort will rotate annually) identified by the CDPH Immunization Branch including interviewing staff, reviewing randomly selected student records, providing guidance regarding noncompliant students, and completing and submitting requested documentation.
- iv. In coordination with the CDPH Immunization Branch, provide guidance and encourage compliance with existing school and child care entry requirements and regulations by all child care centers and schools within the jurisdiction. *The Annual School Immunization Assessment Reporting and Follow-Up Policy* details LHD responsibilities.

b. Suggested Activities:

- i. Conduct presentations, workshops and trainings on school and child care law immunization requirements.
- ii. Provide guidance, including site visits as necessary, to address issues identified in schools grades pre-K through 12th.

EXHIBIT A
Scope of Work

c. Performance Measures:

- i. Accuracy of updated contact lists submitted to the CDPH Immunization Branch.
- ii. Percentage of jurisdictional sites which have completed the annual immunization assessment.

d. Reporting Requirements:

- i. Numbers of schools followed-up with.
- ii. Percentage of late responders that submitted paperwork.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than quarterly in arrears to:

California Department of Public Health
Immunization Branch
Attn: Rossana Anglo-Ordonez
850 Marina Bay Pkwy., Bldg. P, 2nd Floor
Richmond, CA 94804

- C. Invoices shall:

- 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
- 2) Bear the Contractor's name as shown on the agreement.
- 3) Identify the billing and/or performance period covered by the invoice.
- 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this agreement does not appropriate sufficient funds for the program, this agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this agreement and Contractor shall not be obligated to perform any provisions of this agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

Exhibit B
Budget Detail and Payment Provisions

4. Amounts Payable

- A. The amounts payable under this agreement shall not exceed:
- 1) \$28,136 for the budget period of 07/01/13 through 06/30/14.
 - 2) \$28,136 for the budget period of 07/01/14 through 06/30/15.
 - 3) \$28,136 for the budget period of 07/01/15 through 06/30/16.
 - 4) \$28,136 for the budget period of 07/01/16 through 06/30/17.
- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.
- C. The Contractor must maintain records reflecting actual expenditures for each state fiscal year covered by the term of this agreement.

5. Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than sixty (60) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this contract have ceased and that no further payments are due or outstanding. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline.
- B. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "**Contractor's Release (Exhibit F)**".

6. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Contractor and accepted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

Exhibit B
Budget Detail and Payment Provisions

7. Travel and Per Diem

Reimbursement for travel and per diem expenses from CDPH under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated at the following web site:

<http://www.calhr.gov/employees/Pages/travel-reimbursements.aspx>. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. No travel outside the State of California shall be reimbursed without prior written authorization from CDPH. Written authorization may be in a form including fax or email confirmation.

Exhibit B, Attachment I
Budget (Year 1)
(07/01/13 through 06/30/14)

I. Personnel	% of time or hours on project	Monthly salary range or hourly rate	Total
1-Public Health Nurse	20.00%	\$5,920.00	\$14,208.00
1-Administrative Secretary	14.00%	\$2,380.00	\$3,998.00
Total Personnel			\$18,206.00
II. Fringe Benefits (40% of Personnel)			\$7,282.00
III. Operating Expenses or General Expenses			
①Office Supplies			\$1,148.00
IV. *Travel			\$1,500.00
(The contractor shall be reimbursed for the actual claimed and invoiced)			
Total Budget			\$28,136.00

①Office Supplies - \$1148 - this includes purchase of paper, envelopes, pens, pencils paperclips, binders, folders and toner cartridges.

*Travel - \$1500, these funds are needed to cover travel expenses of the program staff engaged in service delivery, outreach activities and case management.

Exhibit B, Attachment II
Budget (Year 2)
(07/01/14 through 06/30/15)

I. Personnel	% of time or hours on project	Monthly salary range or hourly rate	Total
1-Public Health Nurse	20.00%	\$6,215.00	\$14,916.00
1-Administrative Secretary	11.00%	\$3,596.00	\$4,747.00
Total Personnel			\$19,663.00
II. Fringe Benefits (40% of Personnel)			\$7,865.00
III. Operating Expenses or General Expenses			
① Office Supplies			\$108.00
IV. *Travel			\$500.00
(The contractor shall be reimbursed for the actual claimed and invoiced)			
Total Budget			\$28,136.00

① Office Supplies - \$74 - this includes purchase of paper, envelopes, pens and pencils

*Travel - \$500, these funds are needed to cover travel expenses of the program staff engaged in service delivery, outreach activities and case management.

Exhibit B, Attachment III
Budget (Year 3)
(07/01/15 through 06/30/16)

I. Personnel	% of time or hours on project	Monthly salary range or hourly rate	Total
1-Public Health Nurse	19.00%	\$6,523.00	\$14,872.00
1-Administrative Secretary	11.00%	\$3,777.00	\$4,986.00
Total Personnel			\$19,858.00
II. Fringe Benefits (40% of Personnel)			\$7,943.00
III. Operating Expenses or General Expenses			
①Office Supplies			\$335.00
Total Budget			\$28,136.00

①Office Supplies - \$335 - this includes purchase of paper, envelopes, pens, pencils
paperclips, binders and folders

Exhibit B, Attachment IV
Budget (Year 3)
(07/01/16 through 06/30/17)

I. Personnel	% of time or hours on project	Monthly salary range or hourly rate	Total
1-Public Health Nurse	18.50%	\$6,654.00	\$14,772.00
1-Administrative Secretary	11.00%	\$3,889.00	\$5,133.00
Total Personnel			\$19,905.00
II. Fringe Benefits (40% of Personnel)			\$7,962.00
III. Operating Expenses or General Expenses			
① Office Supplies			\$269.00
Total Budget			\$28,136.00

① Office Supplies - \$335 - this includes purchase of paper, envelopes, pens, pencils
paperclips, binders and folders

Exhibit D(F)
Special Terms and Conditions

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Public Health" and "CDPH" shall have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

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1. Federal Equal Opportunity Requirements

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. 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; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- B. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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- G. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Procurement Rules

A. Equipment definitions

Wherever the term equipment /property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.

- B. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

- C. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:

Exhibit D(F)

- (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
- (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
- (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- D. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- E. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- F. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- G. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- H. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

3. Equipment Ownership / Inventory / Disposition

- A. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, Paragraph a, shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement shall be considered state equipment and the property of CDPH.

- (1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by CDPH or purchased/reimbursed with funds provided through this Agreement.

Exhibit D(F)

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the CDPH Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDPH's Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDPH Funds) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the CDPH Program Contract Manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager. Contractor shall:
 - (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
 - (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.
 - (c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.
- B. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.
- C. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- D. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
 - (1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.
- E. Unless otherwise stipulated by the program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH agreement.
- F. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and shall at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

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4. Subcontract Requirements

No subcontractors are identified as part of this agreement.

5. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to CDPH, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDPH under this Agreement.

6. Audit and Record Retention

- A. The Contractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect 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. The foregoing constitutes "records" for the purpose of this provision.
- B. The Contractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- C. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
- D. The Contractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-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 three-year period, whichever is later.
- E. The Contractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- F. The Contractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- G. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

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7. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

8. Federal Contract Funds

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- B. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of 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.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

9. Intellectual Property Rights

A. Ownership

- (1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials

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and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

B. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to CDPH, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

C. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be

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deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.

- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

D. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to CDPH a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH in securing United States and foreign patents with respect thereto.

E. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

F. Warranties

- (1) Contractor represents and warrants that:
 - (a) It is free to enter into and fully perform this Agreement.
 - (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
 - (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
 - (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

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- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.
 - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
- (2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

G. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.
- (2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

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H. Federal Funding

In any agreement funded in whole or in part by the federal government, CDPH may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

I. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

10. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- A. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- B. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

11. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

12. Confidentiality of Information

- A. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- B. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- C. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- D. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.

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- E. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- F. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

13. Documents, Publications and Written Reports

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

14. Dispute Resolution Process

- A. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- B. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- C. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- D. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.

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- E. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

15. Financial and Compliance Audit Requirements

- A. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- B. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code section 38030).
- C. The Contractor, as indicated below, agrees to obtain one of the following audits:
- (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
 - (4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- D. Two copies of the audit report shall be delivered to the CDPH program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit

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report, the CDPH Program Contract Manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.

- E. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The CDPH program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- F. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- G. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- H. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- I. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- J. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- K. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

16. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

17. Novation Requirements

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this Agreement

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to formally implement the approved proposal.

18. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- A. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- B. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- C. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH Program Contract Manager.
- D. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- E. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this Agreement for cause or default.

19. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), 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,

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

- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- C. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- D. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

20. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDPH shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

21. Payment Withholds

Unless waived or otherwise stipulated in this Agreement, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

22. Performance Evaluation

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

23. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

24. Four-Digit Date Compliance

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

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25. Prohibited Use of State Funds for Software

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

26. Use of Small, Minority Owned and Women's Businesses

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority- owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

27. Alien Ineligibility Certification

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

28. Union Organizing

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- A. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- B. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- C. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- D. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

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29. Contract Uniformity (Fringe Benefit Allowability)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- A. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- B. As used herein, fringe benefits do not include:
- (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- C. Specific allowable fringe benefits include:
- (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- D. To be an allowable fringe benefit, the cost must meet the following criteria:
- (1) Be necessary and reasonable for the performance of the Agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- E. Contractor agrees that all fringe benefits shall be at actual cost.
- F. Earned/Accrued Compensation
- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
 - (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
 - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the

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beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

30. Lobbying Restrictions and Disclosure Certification

A. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form- LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

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B. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay 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 any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

31. Additional Restrictions

Contractor shall comply with the restrictions under Division F, Title V, Section 503 of the Consolidated Appropriations Act, 2012 (H.R. 2055), which provides that:

"SEC. 503.(a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed

to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control."

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Attachment 1

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor	Printed Name of Person Signing for Contractor
Contract / Grant Number	Signature of Person Signing for Contractor
Date	Title

After execution by or on behalf of Contractor, please return to:

California Department of Public Health

CDPH reserves the right to notify the contractor in writing of an alternate submission address.

Exhibit D(F)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Exhibit E
Additional Provisions

1. Additional Incorporated Exhibits

- A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by CDPH, as required by program directives. CDPH shall provide the Contractor with copies of said documents and any periodic updates thereto under separate cover. CDPH will maintain on file, all documents referenced herein and any subsequent updates.
- 1) Immunization Assessment of Child Care and Kindergarten Enrollees and Review of Child Care Centers and Kindergarten Schools, developed by CDPH Immunization Branch, 2004.
 - 2) Vaccine Adverse Events Reporting System, developed by the Centers for Disease Control and Prevention.
 - 3) VFC Participation Agreement and Certification of Capacity to Store Vaccines.
 - 4) Policy for Provision of State-funded Vaccines to Privately Insured Patients by Local Health Department Jurisdictions.
 - 5) Vaccine Eligibility Guidelines for Health Department and CDPH Approved Health Department Authorized Sites (HDAS).
 - 6) Clinic Services Document.

2. Cancellation / Termination

- A. This agreement may be cancelled by CDPH **without cause** upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDPH substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

Exhibit E
Additional Provisions

3. Avoidance of Conflicts of Interest by Contractor

- A. The Contractor agrees that all reasonable efforts will be made to ensure that no conflict of interest exists between its officers, agents, employees, consultants or members of its governing body.
- B. The Contractor shall prevent its officers, agents, employees, consultants or members of its governing body from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others such as those with whom they have family, business or other ties.
- C. In the event that CDPH determines that a conflict of interest situation exists, any cost associated with the conflict may constitute grounds for termination of this agreement. This provision shall not be construed to prohibit the employment of persons with whom the Contractor's officers, agents, or employees have family, business or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant and such persons have successfully competed for employment with other applicants on a merit basis.

4. Recovery Payment

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by CDPH by one of the following options:
 - 1) Contractor's remittance to CDPH of the full amount of the audit exception within 30 days following CDPH'S request for repayment;
 - 2) A repayment schedule which is agreeable to the both CDPH and the Contractor.
- B. CDPH reserves the right to select which option will be employed and the Contractor will be notified by CDPH in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of CDPH's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to CDPH, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of CDPH's notice requesting reimbursement of questioned audit costs or disallowed expenses.

Exhibit E
Additional Provisions

5. Required Reports

- A. The state reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Contract and reserves the right to authorize others to use or reproduce such materials, provided that the confidentiality of patient information and records are protected pursuant to California State laws and regulations.

- B. It is agreed by the Contractor that in the event that a significant portion of the Contract objectives for the initial 4 months of the Contract are not met by that time; and in the event that the State determines from quarterly invoices, performance reports, and other sources of information that the Contractor will not perform the total quantity of services contracted for; and that therefore, the total budget allocation will not be depleted; the State and/or Contractor may make an equitable adjustment in the original Contract budget and Contract objectives in order to decrease the total quantity of services and commensurate Contract amount. Any adjustment shall be by amendment only and duly executed by both parties and approved by the Department of General Services (if applicable).

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to contract number 13-20330 entered into between the State of California Department of Public Health (CDPH) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) _____, in the amount(s) of \$ _____ and dated _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDPH or purchased with or reimbursed by contract funds)

Unless CDPH has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDPH agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDPH, at CDPH's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): County of Inyo

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDPH Distribution: Accounting (Original) Program



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER 12

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Health & Human Services-Public Health

FOR THE BOARD MEETING OF: November 26, 2013

SUBJECT: Standard Agreement between the County of Inyo and California Department of Public Health for HIV/AIDS Surveillance.

DEPARTMENTAL RECOMMENDATION:

Request Board ratify the Standard Agreement Amendment, Agreement Number 13-20129, between the County of Inyo and Department of Public Health for the provision of HIV surveillance services for a total grant amount of \$15,156 from the period of July 1, 2013 through June 30, 2016, contingent upon Board's approval of future budgets and authorize the Chairperson to sign the Standard Agreement Amendment, Certification regarding Lobbying, Contractor Certification and the Darfur Contracting Act Certification.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Due to administrative vacancies within the department, Public Health has not been able to address the submission of the agreement until this time. The agreement was received from the State in early August and routing documentation was created and submitted into the county process, once the vacancies were filled.

This program is designed to assure the timeliness, accuracy and reliability of HIV and AIDS reporting and case finding. Program activities include: investigation of reported cases, ongoing updated reports to State on client labs especially those labs indicating transition from HIV to AIDS, surveillance visits or contacts to potential reporters such as physicians and clinics and dissemination of local information related to disease rate and trends.

ALTERNATIVES:

Non-acceptance of this funding would mean that Inyo County would not be able to conduct active surveillance services for HIV/AIDS.

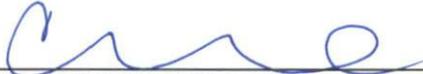
OTHER AGENCY INVOLVEMENT:

California Department of Public Health, Hospital laboratories, private laboratories and health care providers

FINANCING:

100% Federal Funding. Total funding for this program is \$15,156.00 over a three year period; \$5,052 in FY 13/14, \$5,052 in FY 14/15 and \$5,052 in FY 15/16 and is recognized as revenue in the Health Budget (045100). No County General Funds.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11-6-13</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>11-7-2013</u>
PERSONNEL DIRECTOR: N/A	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 11-8-13

REGISTRATION NUMBER	AGREEMENT NUMBER 13-20129
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1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME California Department of Public Health	(Also referred to as CDPH or the State)
CONTRACTOR'S NAME County of Inyo	(Also referred to as Contractor)

2. The term of this Agreement is: July 1, 2013 through June 30, 2016

3. The maximum amount of this Agreement is: \$ 15,156
Fifteen Thousand, One Hundred Fifty Six Dollars

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	5 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit B, Attachment I – Budget (Year 1)	1 page
Exhibit B, Attachment II – Budget (Year 2)	1 page
Exhibit B, Attachment III – Budget (Year 3)	1 page
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)	25 pages
Exhibit E – Additional Provisions	2 pages
Exhibit F – Contractor's Release	1 page
Exhibit G – Travel Reimbursement Information	2 pages
Exhibit H – HIPAA Business Associate Exhibit	11 pages
Exhibit I – Contractor Equipment Purchased with CDPH Funds	2 Pages
Exhibit J – Inventory/Disposition of CDPH-Funded Equipment	2 Pages

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) County of Inyo		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 207A West South Street Bishop, CA 93514		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Public Health		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Yolanda Murillo, Chief, Contracts Management Unit		
ADDRESS 1616 Capitol Avenue, Suite 74.317, MS 1802, PO Box 997377 Sacramento, CA 95899-7377		

Exempt per: OOA Budget Act

Exhibit A
Scope of Work

A. ACTIVE SURVEILLANCE ACTIVITIES – CORE*

Goal: Establish and enhance active and passive HIV/AIDS case surveillance in health and social service settings, including laboratories and confidential test sites. Improve the timeliness, accuracy, and reliability of the local HIV/AIDS case data. Investigate reported HIV/AIDS cases in order to establish an accurate mode of HIV transmission, and in conjunction with California Department of Public Health (CDPH), Office of AIDS (OA) staff, conduct investigations of cases of public health importance.

Objective 1

Program activities include regular surveillance visits to previously classified reporting facilities and to identify new reporting sources.

Objective 2

Evaluate HIV/AIDS name-based case reporting protocols in the facilities identified in Objective 1 above. Establish reporting protocols and revise as needed.

Objective 3

Identify, incorporate, and educate all laboratories of their reporting responsibilities, as specified in the Surveillance Handbook, LHJ Reporting Lab Test Results, at: <http://www.cdph.ca.gov/programs/aids/Pages/SurvProcedures.aspx> . Laboratories are required to report confirmed HIV/AIDS test results to the submitting health care provider and to the local health jurisdiction (LHJ) using the requirements as stated in § 2643.10 HIV Reporting by Laboratories, "The report shall consist of a completed copy of the HIV/AIDS Case Report form".

Objective 4

Assess and use secondary data sources to improve the accuracy of HIV/AIDS case reporting as appropriate, including: vital statistics, tuberculosis registries, sexually transmitted diseases (STD), and community based organizations.

Objective 5

Evaluate and monitor that the laboratories who process HIV/AIDS laboratory tests are submitting all the tests to their office as required by law.

B. HIV/AIDS CASE SURVEILLANCE OPERATIONS – CORE*

Goal: To improve the timeliness, accuracy and reliability of the local HIV/AIDS case data.

Objective 1

Match, or have matched via CalREDIE, HIV positive test results from laboratories to case reports received from health care providers. Ensure that there is no duplication of reports electronically or by checking local county surveillance records and contacting CDPH OA Surveillance Section for case checks.

*Core is an activity required by all counties.

Exhibit A
Scope of Work

Objective 2

Any laboratory update to a case that doesn't result in the client transitioning from HIV to AIDS should be recorded in the Lab Data Entry Tool (LDET) and transmitted to OA on a monthly basis at minimum. All other updates to a case (laboratory tests that cause a case to transition from HIV to AIDS, address changes, status change, diagnosis status, etc.) should immediately be recorded on the Adult HIV/AIDS Case Report Form (ACRF) and forwarded to CDPH, OA per the established CDC Security and Confidentiality Guidelines or via eHARS or via CalREDIE as appropriate.

Objective 3

LHJs with an active CDPH OA Data Use Agreement (DUA) should use this data to execute analysis for Community Viral Load, Geocoding, Linkage to Care, Retention in Care and Quality Assurance. DUAs are active for a twelve month period, so timely renewal is important to avoid a lapse in receiving quarterly data.

Objective 4

The LHJ Surveillance Coordinator and appropriate LHJ staff should attend the monthly CDPH OA Surveillance conference calls in order to ensure clear communication and dissemination of information.

Objective 5

The LHJ Surveillance Coordinator, and identified surveillance/LHJ staff at the discretion of each LHJ, should attend the CDPH OA Surveillance Section Regional Conference in their area in order to ensure clear communication and dissemination of information. Attendance by all LHJ Surveillance Coordinators is mandatory.

C. EPIDEMIOLOGIC HIV/AIDS CASE INVESTIGATIONS – CORE*

Goal: To investigate reported HIV/AIDS cases in order to identify the mode of HIV transmission and, in conjunction with OA staff, to conduct investigations of Cases of Public Health Importance (COPHI).

Objective 1

Investigate all Priority No Reported Risk (NRR) HIV/AIDS cases (i.e., children, healthcare workers, organ transplants/artificial insemination), within two months of reporting using the most recent Centers for Disease Control and Prevention (CDC) no reported risk (NRR) investigation protocols. Investigate all cases of public health importance (COPHI) NRR HIV/AIDS cases (i.e., HIV2, tattoos, bites) within two months of reporting using the most recent CDC NRR investigation protocols. Investigate all other NRR cases within six months of diagnosis.

In conjunction with OA staff, investigate COPHI including, but not limited to: health care worker(s) whose only reported exposure is job related; blood transfusion; organ transplant; artificial insemination; or unique cases such as tattoos. See Surveillance

*Core is an activity required by all counties.

Exhibit A
Scope of Work

Handbook, XIV. COPHI Cases Overview
at <http://www.cdph.ca.gov/programs/aids/Pages/SurvProcedures.aspx>.

Objective 2

Educate healthcare providers about the need to obtain and report risk information from their HIV diagnosed patients.

Objective 3

Participate in Medical Monitoring Project (MMP) and HIV Incidence Surveillance (HIS) data gathering requirements.

D. PROCEDURES FOR ENSURING CONFIDENTIALITY OF ALL INFORMATION - CORE*

Goal: To protect the rights of individuals infected with HIV/AIDS by assuring that identifying information is safeguarded both in original case reports and in disseminated data.

Objective 1

Develop and maintain a secure registry. All physical locations containing HIV/AIDS surveillance data in electronic or paper format, as well as workstations for surveillance personnel, must be enclosed inside a locked, secured area with access limited to authorized personnel in accordance with CDC program requirements. See Surveillance Handbook, V. Security and Confidentiality at <http://www.cdph.ca.gov/programs/aids/Pages/SurvProcedures.aspx>

Paper copies of surveillance information containing identifying information must be stored inside a locked file cabinet located inside a locked room. Shredding of confidential HIV/AIDS-related information should be performed by authorized surveillance personnel (LHJ employees who have signed the Individual Security and Confidentiality Agreement form) using a commercial quality shredder with cross-cutting capability before disposal. Shredding should be used to destroy paper records containing confidential HIV/AIDS-related information. These records include, but are not limited to:

- a. Line listings identifying individuals as having HIV or AIDS
- b. Medical record review notes
- c. Laboratory reports of HIV infection or CD4+ counts
- d. Computer data runs and analyses
- e. Program specific internal reports
- f. Other working papers

Objective 2

Submit all case report forms, HIV/AIDS related material, and/or encrypted electronic data in double envelopes and the outer envelope (e.g., sender or recipient address or label) must have no reference to HIV/AIDS or include any terms easily associated with HIV/AIDS. The inner envelope must be marked 'Confidential', sealed, and

*Core is an activity required by all counties.

Exhibit A
Scope of Work

addressed to their assigned Surveillance Coordinator at OA and should also identify the agency that originated the package mailing. All mail must be sent by traceable courier services only (i.e., United Parcel Service, Federal Express [FedEx] or U.S. Post Office). The overnight mailing address is Steven Starr, California Department of Public Health, Surveillance Section, MS 7700, 1616 Capitol Avenue, Suite 74.616, Sacramento, CA, 95814. Only LHJ personnel who have signed the OA Individual Confidentiality Agreement are permitted to handle confidential mail.

Also, California Health and Safety Code 121022, Section (b)(1) states the following: "Health care providers and local health officers shall submit cases of HIV infection pursuant to subdivision (a) by courier service, United States Postal Service express mail or registered mail, other traceable mail, person-to-person transfer, facsimile, or electronically by a secure and confidential electronic reporting system established by the department." OA has implemented a Secure File Transfer Protocol (SFTP) site for the transmission of HIV surveillance information and LHJs may submit their data with OA via this method as appropriate; please see the SFTP SOP for details. The OA Surveillance Section will also start releasing CalREDIE for HIV/AIDS reporting in 2013. OA and the CDC strongly suggest that HIV related information is never transmitted via fax due to the lack of confidentiality.

Objective 3

HIV/AIDS case information is transferred from the LHJ to the OA Surveillance Section via paper reports and, for San Francisco and Los Angeles, via direct input into eHARS. LHJs do not report HIV/AIDS cases directly to CDC. When receiving or initiating phone conversations to complete or un-duplicate HIV/AIDS case reports, verify that the caller is authorized to exchange confidential HIV/AIDS case information. All telephone conversations must be conducted using phones that are connected to land-lines. Cell phones and wireless communication (except for headsets with land phones) are not permitted.

Objective 4

Laptop computers and other portable electronic devices are vulnerable to theft. These devices warrant the most stringent security protocols. Employing strict security measures ensures that the confidentiality of patients is protected in the event that a device is lost or stolen. OA does not provide laptop computers or funding for portable electronic devices.

Objective 5

According to California law, only authorized personnel who have signed an Individual Confidentiality Agreement are permitted to handle confidential public health records. Individual Confidentiality Agreements must be signed at time of employment and annually thereafter after reviewing the OA provided Security and Confidentiality training. Individuals are not authorized to access confidential surveillance information until their signed Individual Confidentiality Agreements have been reviewed and signed by the supervisor of these individuals, and those agreements have been received by OA.

*Core is an activity required by all counties.

Exhibit A
Scope of Work

E. ANALYSIS, DISSEMINATION, AND USES OF SURVEILLANCE DATA

Goal: In collaboration with OA, plan, conduct, and disseminate studies of HIV/AIDS morbidity and mortality. All studies should adhere to confidentiality guidelines. See Surveillance Handbook at VI. National HIV/AIDS Program Standards: <http://www.cdph.ca.gov/programs/aids/Pages/SurvProcedures.aspx>).

Objective 1

Assess ability to analyze HIV/AIDS surveillance data, disseminate the results, and use the information to detect local patterns and trends of the disease.

Objective 2

Prepare epidemiological summaries synthesizing HIV/AIDS case data for populations of local interest.

Objective 3

Disseminate HIV/AIDS surveillance information through: responses to data requests; direct contact with HIV/AIDS name based case reporting sources; presentations at conferences and meetings; publications, scientific journals, newsletters and bulletins of community and medical organizations.

Objective 4

Encourage the appropriate use of HIV/AIDS name based surveillance information for funding decisions, establishing public health priorities and making policy decisions. As part of the process, incorporate program awareness and knowledge to medical policy makers, health care providers, persons at risk for HIV infection, and the general population. Conduct further epidemiological investigations as needed and evaluate findings.

F. EVALUATION OF HIV/AIDS SURVEILLANCE SYSTEM

Goal: Monitor the timeliness and completeness of HIV/AIDS name based case reporting and direct HIV/AIDS case finding activities to ensure optimal use of surveillance resources.

Objective 1

Conduct validation studies of providers who treat HIV infected individuals to monitor HIV/AIDS name based case reporting and continue to encourage major providers to regularly monitor their records in the same way.

Objective 2

Develop, implement, and evaluate the effectiveness of surveillance activities and use evaluation outcomes to allocate appropriate resources.

*Core is an activity required by all counties.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the attached budget.
- B. Invoices must include the Agreement Number and Program Name and must be submitted not more frequently than monthly in arrears. Each invoice for the quarter shall be submitted for payment no more than thirty (30) calendar days following the close of each quarter, unless an alternate deadline is agreed to in writing by the program contract manager. Direct all inquiries to:

Invoice Desk
California Department of Public Health
Office of AIDS
MS 7700
1616 Capitol Avenue, Suite 616
P.O. Box 997426
Sacramento, CA 95899-7426

- C. Invoices shall:
 - 1) Submit on Contractor letterhead and signed by an authorized representative, certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Identify contract agreement number.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

Exhibit B
Budget Detail and Payment Provisions

4. Amounts Payable

A. The amounts payable under this agreement shall not exceed:

- 1) \$5,052 for the budget period of 07/01/13 through 06/30/14.
- 2) \$5,052 for the budget period of 07/01/14 through 06/30/15.
- 3) \$5,052 for the budget period of 07/01/15 through 06/30/16.

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

5. Timely Submission of Final Invoice

A. A final undisputed invoice shall be submitted for payment no more than sixty (60) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline.

B. The Contractor is hereby advised of its obligation to submit to the state, with the final invoice, a completed copy of the "**Contractor's Release (Exhibit F)**".

6. Allowable Line Item Shifts

A. Subject to the prior review and approval of the State, line item shifts of up to fifteen percent (15%) of the annual contract total, not to exceed a maximum of one hundred thousand (\$100,000) annually are allowed, so long as the annual agreement total neither increases nor decreases.

The \$100,000 maximum limit shall be assessed annually and automatically adjusted by the State in accordance with cost-of-living indexes. Said adjustments shall not require a formal agreement amendment. The State shall annually inform the Contractor in writing of the adjusted maximum.

B. Line item shifts meeting this criteria shall not require a formal agreement amendment.

C. The Contractor shall adhere to State requirements regarding the process to follow in requesting approval to make line item shifts.

D. Line item shifts may be proposed/requested by either the State or the Contractor.

Exhibit B
Budget Detail and Payment Provisions

7. Expense Allowability / Fiscal Documentation

- A. Invoices, received from the Contractor and accepted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

8. Recovery of Overpayments

- A. Contractor agrees that claims based upon the terms of this agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option, as indicated above in paragraph A, will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

Exhibit B - Attachment I
HIV Surveillance Program
Budget (Year 1)
July 1, 2013 to June 30, 2014

A. PERSONNEL	\$5,052
B. OPERATING EXPENSES	\$0
C. CAPITAL EXPENDITURES	\$0
D. OTHER COSTS	\$0
E. INDIRECT COSTS (Up to 15% of Personnel)	\$0
TOTALS	\$5,052

Exhibit B - Attachment II
HIV Surveillance Program
Budget (Year 2)
July 1, 2014 to June 30, 2015

A. PERSONNEL	\$5,052
B. OPERATING EXPENSES	\$0
C. CAPITAL EXPENDITURES	\$0
D. OTHER COSTS	\$0
E. INDIRECT COSTS (Up to 15% of Personnel)	\$0
TOTALS	\$5,052

Exhibit B - Attachment III
HIV Surveillance Program
Budget (Year 3)
July 1, 2015 to June 30, 2016

A. PERSONNEL	\$5,052
B. OPERATING EXPENSES	\$0
C. CAPITAL EXPENDITURES	\$0
D. OTHER COSTS	\$0
E. INDIRECT COSTS (Up to 15% of Personnel)	\$0
TOTALS	\$5,052

GTC 610

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors 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 (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). 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. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Public Health" and "CDPH" shall have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
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11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
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13. Confidentiality of Information	29. Union Organizing
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15. Dispute Resolution Process	31. Lobbying Restrictions and Disclosure Certification
16. Financial and Compliance Audit Requirements	32. Additional Restrictions

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. 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; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from CDPH under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDPH's Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by CDPH upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to all agreements in which equipment, property, commodities and/or supplies are furnished by CDPH or expenses for said items are reimbursed with state or federal funds.)

a. Equipment definitions

Wherever the term equipment /property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or

through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or property is furnished by CDPH and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, Paragraph a, shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement shall be considered state equipment and the property of CDPH.

- (1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by CDPH or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the CDPH Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDPH's Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDPH Funds) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the CDPH Program Contract Manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.
- (c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.

- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

- (1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.

- e. Unless otherwise stipulated by the program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH agreement.

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and

shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

g. Motor Vehicles

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under this Agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDPH Program Contract Manager. The certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to CDPH.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior

written notice to the State (California Department of Public Health (CDPH)).

- [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
 - [3] The insurance carrier shall notify CDPH, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services costing \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) The State may identify the information needed to fulfill this requirement.
 - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:
<http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm>.
 - (i) Entities whose name and budgeted costs have been submitted to CDPH in response to a competitive solicitation.
- b. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

- (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.
 - d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
 - e. CDPH assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
 - f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
 - g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
 - h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
 - i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
 - j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 31 or other numbered provisions herein that deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to CDPH, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDPH under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect 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. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this

Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-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 three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of 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.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

- d. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to CDPH, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to CDPH a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

f. Warranties

- (1) Contractor represents and warrants that:
- (a) It is free to enter into and fully perform this Agreement.
 - (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
 - (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
 - (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.
 - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
- (2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

- (2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, CDPH may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the

Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, and/or
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, and/or
 - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

- (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- (4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the CDPH program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDPH Program Contract Manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
- e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The CDPH program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this Agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH Program Contract Manager.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), 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 provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDPH shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to CDPH or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the Agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. Earned/Accrued Compensation
 - (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
 - (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
 - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay 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 any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

32. **Additional Restrictions**

(Applicable to all contracts funded in whole or in part with funding from the federal Departments of Labor, Health and Human Services (including CDC funding), or Education.)

Contractor shall comply with the restrictions under Division F, Title V, Section 503 of the Consolidated Appropriations Act, 2012 (H.R. 2055), which provides that:

"SEC. 503.(a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control."

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Name of Contractor	Printed Name of Person Signing for Contractor
<hr/>	<hr/>
Contract / Grant Number	Signature of Person Signing for Contractor
<hr/>	<hr/>
Date	Title

After execution by or on behalf of Contractor, please return to:

California Department of Public Health
Office of AIDS, MS 7700
1616 Capitol Avenue, MS 7700
Sacramento, CA 95814

CDPH reserves the right to notify the contractor in writing of an alternate submission address.

CERTIFICATION REGARDING LOBBYING
 Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
 (See reverse for public burden disclosure)

Approved by OMB
 0348-0048

<p>1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year ____ quarter ____ date of last report ____.</p>
<p>4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known: Congressional District, if known: _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____</p>	
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description: CDFA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from 10a. (Last name, First name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. required disclosure shall be subject to a not more than \$100,000 for each such failure.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>		<p>Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
 (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Exhibit E
Additional Provisions

1. Additional Incorporated Exhibits

The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by CDPH, as required by program directives. CDPH shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. CDPH will maintain on file, all documents referenced herein and any subsequent updates.

- HIV Surveillance Program Budget Detail

2. Cancellation / Termination

This agreement may be cancelled by CDPH or Contractor **without cause** upon 30 calendar days advance written notice to the other party.

- CDPH reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDPH substantially fails to perform its responsibilities as provided herein.
- The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- Agreement termination or cancellation shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

3. Avoidance of Conflicts of Interest by Contractor

- CDPH intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDPH reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDPH review and prior approval.
- Conflicts of interest include, but are not limited to:
 - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.

Exhibit E
Additional Provisions

- 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDPH is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDPH to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDPH and cannot be resolved to the satisfaction of CDPH, the conflict will be grounds for terminating the contract. CDPH may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

4. Insurance Requirements

Contractor shall comply with the following insurance requirements:

A. Commercial General Liability

The Contractor must furnish to CDPH a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.

B. The certificate of insurance must identify the agreement number for which the certificate of insurance applies and include the following provisions:

- 1) The insurer will not cancel the insured's coverage without giving 30 days prior written notice to the California Department of Public Health, and
- 2) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this agreement.

C. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the agreement or for a period of not less than one year. CDPH may, in addition to any other remedies it may have, terminate this agreement on the occurrence of such event.

D. CDPH will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to contract number 13-20129 entered into between the State of California Department of Public Health (CDPH) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) _____, in the amount(s) of \$ _____ and dated _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDPH or purchased with or reimbursed by contract funds)

Unless CDPH has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDPH agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDPH, at CDPH's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDPH Distribution: Accounting (Original) Program

Travel Reimbursement Information
(Mileage Reimbursement Increase Effective 1/1/13)

1. The following rate policy is to be applied for reimbursing the travel expenses of persons under contract. The terms "contract" and/or "subcontract" have the same meaning as "grantee" and/or "subgrantee" where applicable.
- a. Reimbursement for travel and/or per diem shall be at the rates established for nonrepresented/excluded state employees. Exceptions to California Department of Human Resources (CalHR) lodging rates may be approved by the California Department of Public Health (CDPH) upon the receipt of a statement on/with an invoice indicating that such rates are not available.
 - b. Short Term Travel is defined as a 24-hour period, and less than 31 consecutive days, and is at least 50 miles from the main office, headquarters or primary residence. Starting time is whenever a contract or subcontract employee leaves his or her home or headquarters. "Headquarters" is defined as the place where the contracted personnel spends the largest portion of their working time and returns to upon the completion of assignments. Headquarters may be individually established for each traveler and approved verbally or in writing by the program funding the agreement. Verbal approval shall be followed up in writing or email.
 - c. Contractors on travel status for more than one 24-hour period and less than 31 consecutive days may claim a fractional part of a period of more than 24 hours. Consult the chart appearing on Page 2 of this exhibit to determine the reimbursement allowance. All lodging reimbursement claims must be supported by a receipt*. If a contractor does not or cannot present receipts, lodging expenses will not be reimbursed.

(1) Lodging (with receipts*):

Travel Location / Area	Reimbursement Rate
Statewide (excluding the counties identified below)	\$ 84.00 plus tax
Counties of Los Angeles and San Diego	\$110.00 plus tax
Counties of Alameda, San Francisco, San Mateo, and Santa Clara	\$140.00 plus tax

Reimbursement for actual lodging expenses that exceed the above amounts may be allowed with the advance approval of the Deputy Director of the California Department of Public Health (CDPH) or his or her designee. Receipts are required.

*Receipts from Internet lodging reservation services such as Priceline.com which require prepayment for that service, ARE NOT ACCEPTABLE LODGING RECEIPTS and are not reimbursable without a valid lodging receipt from a lodging establishment.

- (2) Meal/Supplemental Expenses (with or without receipts): With receipts, the contractor will be reimbursed actual amounts spent up to the maximum for each full 24-hour period of travel.

Meal / Expense	Reimbursement Rate
Breakfast	\$ 6.00
Lunch	\$ 10.00
Dinner	\$ 18.00
Incidental expenses	\$ 6.00

- d. Out-of-state travel may only be reimbursed if such travel is necessitated by the scope or statement of work and has been approved in advance by the program with which the contract is held. For out-of-state travel, contractors may be reimbursed actual lodging expenses, supported by a receipt, and may be reimbursed for meals and supplemental expenses for each 24-hour period computed at the rates listed in c. (2) above. For all out-of-state travel, contractors/subcontractors must have prior CDPH written or verbal approval. Verbal approval shall be confirmed in writing (email or memo).
- e. In computing allowances for continuous periods of travel of less than 24 hours, consult the chart appearing on Page 2 of this exhibit.
- f. No meal or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours, unless expenses are incurred at least 50 miles from headquarters.

- If any of the reimbursement rates stated herein is changed by CalHR, no formal contract amendment will be required to incorporate the new rates. However, CDPH shall inform the contractor, in writing, of the revised travel reimbursement rates and the applicable effective date of any rate change.

At CDPH's discretion, changes or revisions made by CDPH to this exhibit, excluding travel reimbursement policies established by CalHR may be applied retroactively to any agreement to which a Travel Reimbursement Information exhibit is attached, incorporated by reference, or applied by CDPH program policy. Changes to the travel reimbursement rates stated herein may not be applied earlier than the date a rate change is approved by CalHR.

- For transportation expenses, the contractor must retain receipts for parking; taxi, airline, bus, or rail tickets; car rental; or any other travel receipts pertaining to each trip for attachment to an invoice as substantiation for reimbursement. Reimbursement may be requested for commercial carrier fares; private car mileage; parking fees; bridge tolls; taxi, bus, or streetcar fares; and auto rental fees when substantiated by a receipt.
- Note on use of autos:** If a contractor uses his/her or a company car for transportation, the rate of reimbursement will be **56.5 cents** maximum per mile. If a contractor uses his/her or a company car "in lieu of" airfare, the air coach fare will be the maximum paid by the State. The contractor must provide a cost comparison upon request by the State. Gasoline and routine automobile repair expenses are not reimbursable.
- The contractor is required to furnish details surrounding each period of travel. Travel expense reimbursement detail may include, but not be limited to: purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate travel documentation.
- Contractors are to consult with the program with which the contract is held to obtain specific invoicing procedures.

Per Diem Reimbursement Guide

Length of travel period	This condition exists...	Allowable Meal(s)
Less than 24 hours	Trip begins at or before 6 a.m. and ends at or after 9 a.m.	Breakfast may be claimed.
Less than 24 hours	Trip begins at or before 4 p.m. and ends at or after 7 p.m.	Dinner may be claimed.
<i>Contractor may not claim lunch or incidentals on one-day trips. When trips are less than 24 hours and there's no overnight stay, meals claimed are taxable.</i>		
24 hours	Trip begins at or before 6 a.m.	Breakfast may be claimed.
24 hours	Trip begins at or before 11 a.m.	Lunch may be claimed.
24 hours	Trip begins at or before 5 p.m.	Dinner may be claimed.
More than 24 hours	Trip ends at or after 8 a.m.	Breakfast may be claimed.
More than 24 hours	Trip ends at or after 2 p.m.	Lunch may be claimed.
More than 24 hours	Trip ends at or after 7 p.m.	Dinner may be claimed.
<i>Contractor may not claim meals provided by the State, meals included in hotel expenses or conference fees, meals included in transportation costs such as airline tickets, or meals that are otherwise provided. Snacks and continental breakfasts such as rolls, juice, and coffee are not considered to be meals.</i>		

Exhibit H
HIPAA Business Associate Exhibit

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The California Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI") pursuant to HIPAA regulations.
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor is the Business Associate of CDPH that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDPH and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations.
- G. The purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.
- H. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms are defined in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

Exhibit H
HIPAA Business Associate Exhibit

II. Permitted Uses and Disclosures of PHI by Business Associate

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Exhibit, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Exhibit, Business Associate may:
- 1) **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
 - 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDPH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDPH.

III. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDPH with its current and updated policies.
- C. **Security.** The Business Associate shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing CDPH PHI. These steps shall include, at a minimum:
- 1) complying with all of the data system security precautions listed in the Business Associate Data Security Standards set forth in Attachment 1 to this Exhibit;
 - 2) providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III-

Exhibit H
HIPAA Business Associate Exhibit

Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to CDPH PHI from breaches and security incidents.

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Exhibit.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDPH, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Exhibit into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to CDPH and Individuals.** To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health care component health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDPH.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify CDPH **immediately by telephone call plus email or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized

Exhibit H
HIPAA Business Associate Exhibit

use or disclosure of PHI in violation of this Agreement and this Exhibit, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDPH ITSD Help Desk. Business Associate shall take:

- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. **Within 72 hours of the discovery**, to notify the CDPH Program Contract Manager(s), the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
- i. What data elements were involved and the extent of the data involved in the breach,
 - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

Exhibit H
 HIPAA Business Associate Exhibit

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0505 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (916) 440-7671	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

K. Employee Training and Discipline. To train and use reasonable measures to ensure compliance with the requirements of this Exhibit by employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Exhibit, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

IV. Obligations of CDPH

CDPH agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with applicable and relevant Notice(s) of Privacy Practices that CDPH HIPAA-covered healthcare components produce in accordance with 45 CFR 164.520, as well as any changes to such notice(s).
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

Exhibit H
HIPAA Business Associate Exhibit

V. Audits, Inspection and Enforcement

From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Exhibit. Business Associate shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Privacy Officer or the CDPH Chief Information Security Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Exhibit, nor does CDPH's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under this Agreement and this Exhibit.

VI. Termination

- A. **Termination for Cause.** Upon CDPH's knowledge of a material breach of this Exhibit by Business Associate, CDPH shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Exhibit and cure is not possible; or
 - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Exhibit to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. **Disclaimer.** CDPH makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business

Exhibit H
HIPAA Business Associate Exhibit

Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH's request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDPH may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by CDPH pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding and security of PHI that CDPH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Exhibit to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section VII.C of this Exhibit shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Exhibit H
HIPAA Business Associate Exhibit

Attachment 1
Business Associate Data Security Standards

1. General Security Controls

- A. **Confidentiality Statement.** All persons that will be working with CDPH PHI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PHI. The statement must be renewed annually. The Business Associate shall retain each person's written confidentiality statement for CDPH inspection for a period of three (3) years following contract termination.
- B. **Background check.** Before a member of the Business Associate's workforce may access CDPH PHI, Business Associate must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Business Associate shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.
- C. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store CDPH PHI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- D. **Server Security.** Servers containing unencrypted CDPH PHI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- E. **Minimum Necessary.** Only the minimum necessary amount of CDPH PHI required to perform necessary business functions may be copied, downloaded, or exported.
- F. **Removable media devices.** All electronic files that contain CDPH PHI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher
- G. **Antivirus software.** All workstations, laptops and other systems that process and/or store CDPH PHI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- H. **Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation

Exhibit H
HIPAA Business Associate Exhibit

timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.

- I. **User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:
 - Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- J. **Data Sanitization.** All CDPH PHI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

2. System Security Controls

- A. **System Timeout.** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- B. **Warning Banners.** All systems containing CDPH PHI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- C. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PHI, or which alters CDPH PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If CDPH PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- D. **Access Controls.** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
- E. **Transmission encryption.** All data transmissions of CDPH PHI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PHI can be encrypted. This requirement pertains to any type of CDPH PHI in motion such as website access, file transfer, and E-Mail.

Exhibit H
HIPAA Business Associate Exhibit

F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDPH PHI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

A. **System Security Review.** All systems processing and/or storing CDPH PHI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.

B. **Log Reviews.** All systems processing and/or storing CDPH PHI must have a routine procedure in place to review system logs for unauthorized access.

C. **Change Control.** All systems processing and/or storing CDPH PHI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

a. **Disaster Recovery.** Business Associate must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PHI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.

Data Backup Plan. Business Associate must have established documented procedures to backup CDPH PHI to maintain retrievable exact copies of CDPH PHI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PHI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

5. Paper Document Controls

A. **Supervision of Data.** CDPH PHI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. CDPH PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

B. **Escorting Visitors.** Visitors to areas where CDPH PHI is contained shall be escorted and CDPH Protected Health Information shall be kept out of sight while visitors are in the area.

C. **Confidential Destruction.** CDPH PHI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

Exhibit H
HIPAA Business Associate Exhibit

- D. **Removal of Data.** CDPH PHI must not be removed from the premises of the Business Associate except with express written permission of CDPH.
- E. **Faxing.** Faxes containing CDPH PHI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
- F. **Mailing.** CDPH PHI shall only be mailed using secure methods. Large volume mailings of CDPH Protected Health Information shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a CDPH approved solution, such as a solution using a vendor product specified on the CSSI.

INSTRUCTIONS FOR CDPH 1203
(Please read carefully.)

The information on this form will be used by the California Department of Public Health (CDPH) Asset Management (AM) to tag contract equipment and/or property (see definitions A, and B) which is purchased with CDPH funds and is used to conduct state business under this contract. After the Standard Agreement has been approved and each time state/CDPH equipment and/or property has been received, the CDPH Program Contract Manager is responsible for obtaining the information from the Contractor and submitting this form to CDPH AM. The CDPH Program Contract Manager is responsible for ensuring the information is complete and accurate. (See *Health Administrative Manual (HAM)*, Section 2-1060 and Section 9-2310.)

Upon receipt of this form from the CDPH Program Contract Manager, AM will fill in the first column with the assigned state/ CDPH property tag, if applicable, for each item (See definitions A and B). AM will return the original form to the CDPH Program Contract Manager, along with the appropriate property tags. The CDPH Program Contract Manager will then forward the property tags and the original form to the Contractor and retain one copy until the termination of this contract. The Contractor should place property tags in plain sight and, to the extent possible, on the item's front left-hand corner. The manufacturer's brand name and model number are not to be covered by the property tags.

1. If the item was shipped via the CDPH warehouse and was issued a state/CDPH property tag by warehouse staff, fill in the assigned property tag. If the item was shipped directly to the Contractor, leave the first column blank.
2. Provide the quantity, description, purchase date, base unit cost, and serial number (if applicable) for each item of:
 - A. **Major Equipment:**
 - Tangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more.
 - Intangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more (e.g., software, video).

These items are issued green numbered state/ CDPH property tags.
 - B. **Minor Equipment/Property:** Specific tangible items with a life expectancy of one (1) year or more that have a base unit cost less than \$5,000. **These items are issued green unnumbered "BLANK" state/ CDPH property tags** with the exception of the following, which are issued numbered tags: Personal Digital Assistant (PDA), PDA/cell phone combination (Blackberries), laptops, desktop personal computers, LAN servers, routers, and switches. NOTE: It is CDPH policy not to tag modular furniture. (See your Federal rules, if applicable.)
3. Provide the CDPH Purchase Order (STD 65) number if the items were purchased by CDPH. (See HAM, Section 2-1050.1.)
4. If a vehicle is being reported, provide the Vehicle Identification Number (VIN) and the vehicle license number to CDPH Vehicle Services. (See HAM, Section 2-10050.)
5. If all items being reported do not fit on one form, make copies and write the number of pages being sent in the upper right-hand corner (e.g., "Page 1 of 3.") The CDPH Program Contract Manager should retain one copy and send the original to: California Department of Public Health, Asset Management, MS 1801, P.O. Box 997377, 1501 Capitol Avenue, Sacramento, CA 95899-7377.
6. Property tags that have been lost or destroyed must be replaced. Replacement property tags can be obtained by contacting AM at (916) 341-6168.
7. Use the version on the CDPH Intranet forms site. The CDPH 1203 consists of one page for completion and one page with information and instructions.

INSTRUCTIONS FOR CDPH 1204
(Please read carefully.)

The information on this form will be used by the California Department of Public Health (CDPH) Asset Management (AM) to: (a) conduct an inventory of CDPH equipment and/or property (see definitions A, and B) in the possession of the Contractor and/or Subcontractors, and (b) dispose of these same items. Report all items, regardless of the items' ages, per number 1 below, purchased with CDPH funds and used to conduct state business under this contract. (See *Health Administrative Manual (HAM)*, Section 2-1060 and Section 9-2310.)

The CDPH Program Contract Manager is responsible for obtaining information from the Contractor for this form. The CDPH Program Contract Manager is responsible for the accuracy and completeness of the information and for submitting it to AM.

Inventory: List all CDPH tagged equipment and/or property on this form and submit it within 30 days prior to the three-year anniversary of the contract's effective date, if applicable. **The inventory should be based on previously submitted CDPH 1203s**, "Contractor Equipment Purchased with CDPH Funds." AM will contact the CDPH Program Contract Manager if there are any discrepancies. (See HAM, Section 2-1040.1.)

Disposal: (*Definition: Trade in, sell, junk, salvage, donate, or transfer; also, items lost, stolen, or destroyed (as by fire).*) The CDPH 1204 should be completed, along with a "Property Survey Report" (STD. 152) or a "Property Transfer Report" (STD. 158), whenever items need to be disposed of; (a) during the term of this contract and (b) 30 calendar days before the termination of this contract. After receipt of this form, the AM will contact the CDPH Program Contract Manager to arrange for the appropriate disposal/transfer of the items. (See HAM, Section 2-1050.3.)

1. List the state/ CDPH property tag, quantity, description, purchase date, base unit cost, and serial number (if applicable) for each item of;
 - A. Major Equipment: **(These items were issued green numbered state/ CDPH property tags.)**
 - Tangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more.
 - Intangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more (e.g., software, video.)
 - B. Minor Equipment/Property: **(These items were issued green state/ CDPH property tags.)**

Specific tangible items with a life expectancy of one (1) year or more that have a base unit cost less than \$5,000. The minor equipment and/or property items were issued green unnumbered "BLANK" state/ CDPH property tags with the exception of the following, which are issued numbered tags: Personal Digital Assistant (PDA), PDA/cell phone combination (Blackberries), laptops, desktop personal computers, LAN servers, routers and switches.
2. If a vehicle is being reported, provide the Vehicle Identification Number (VIN) and the vehicle license number to CDPH Vehicle Services. (See HAM, Section 2-10050.)
3. If all items being reported do not fit on one page, make copies and write the number of pages being sent in the upper right-hand corner (e.g. "Page 1 of 3.")
4. The CDPH Program Contract Manager should retain one copy and send the original to: California Department of Public Health, Asset Management, MS1801, P.O. Box 997377, 1501 Capitol Avenue, Sacramento, CA 95899-7377.
5. Use the version on the CDPH Intranet forms site. The CDPH 1204 consists of one page for completion and one page with information and instructions.

For more information on completing this form, call AM at (916) 341-6168.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

- Consent Departmental Correspondence Action
 Public Hearing Schedule time for Closed Session Informational

For Clerk's Use
Only:

AGENDA NUMBER

12

FROM: Road Department

FOR THE BOARD MEETING OF: November 26, 2013

SUBJECT: Lease renewal with the City of Los Angeles for the Sunland Road Borrow Pit.

DEPARTMENTAL RECOMMENDATIONS:

Ratify the Lease Agreement between Inyo County and Los Angeles Department of Water & Power for the Sunland Borrow Pit, for a term of five years, beginning October 1, 2012 and expiring on September 30, 2017.

The basic rent amount is as follows:

\$500.00 per year beginning on October 1, 2012

\$515.00 per year beginning on October 1, 2013

\$530.00 per year beginning on October 1, 2014

\$546.00 per year beginning on October 1, 2015

\$574.00 per year beginning on October 1, 2016.

In addition to the annual rent amount, there is a special rent amount of \$0.50 per ton for material removed from the site.

The County shall pay any and all taxes levied on improvements, fixtures, equipment or other property thereon or upon the County's use thereof.

Contingent upon appropriate signatures being obtained.

Authorize the Board Chairperson to sign the Lease Agreement. Contingent upon approval of future budgets.

CAO RECOMMENDATIONS:

SUMMARY DISCUSSION:

The Road Department has leased several borrow pit sites from the City of Los Angeles. The lease for this site has lapsed and needs to be renewed.

The Sunland pit is located at 2343 Sunland Road, near the Bishop Landfill.

The County may sell material from the leased site to other governmental agencies, companies, or individuals. The amount of material sold to any company, agency, or individual user shall be limited to 300 tons per month, except when written permission is received from the City of Los Angeles allowing the County to sell more than 300 tons per month.

ALTERNATIVES:

Not to approve the new lease.

OTHER AGENCY INVOLVEMENT:

County Counsel and Risk Management

FINANCING:

The Road Department will pay the lease rental fees and said property taxes. This has been budgeted through budget 034600, object code 5291.

APPROVALS

COUNTY COUNSEL:

AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.)

Approved: yes 10/30/2013 Date _____

AUDITOR/CONTROLLER

ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)

Approved: yes Date 11/19/2013

PERSONNEL DIRECTOR

PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

Approved: N/A Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

Date: 11/19/13

LEASE NO. 1468

BETWEEN

**COUNTY OF INYO
PUBLIC WORKS DEPARTMENT**

AND

**THE CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER**

ARTICLE I. SPECIFIC TERMS AND PROVISIONS

The Department of Water and Power of the City of Los Angeles, hereinafter Lessor, and:

County of Inyo
Public Works Department

hereinafter Lessee, agree as follows:

1. **LEASED PREMISES:** Lessor leases to Lessee the premises (21.19 acres) located at 2343 Sunland Drive, Bishop, Inyo County, California, more particularly shown on the drawing marked *Exhibit A*, (BL-1468) attached hereto and made a part hereof.
2. **TERM:** The term of this lease, upon approval by the Board of Water and Power Commissioners, or their designee(s), shall be from October 1, 2012, through September 30, 2017 for a term of five years, unless sooner terminated as herein provided.
3. **DESIGNATED USE:** A borrow material site for Inyo County use. The County may sell material from the leased site to other governmental agencies, companies, or individuals. The amount of material sold to any company, agency, or individual user shall be limited to 300 tons per month, except when written permission is received from the Lessor allowing Lessee to sell more than 300 tons per month.
4. **RIGHT TO REMOVE MATERIAL:** Lessor shall have the right to remove material and shall notify Lessee, in advance, of intent to remove material. Lessor shall report the volume or material removed by the Lessor on the day it is removed. Lessor shall not pay for the material; however, the Lessor shall pay for the increased costs to Lessee in Mining Operation Annual Reporting, required by the State Department of Conservation Office of Mine Reclamation, caused by the Lessor removing material from the pit. Lessee shall be responsible for SMARA reporting and compliance for all material removed from the pit.
5. **RENT:**
 - 5.1. Rent Schedule – Plus All Taxes:
 - 5.1.1. *Base Rent Schedule:*
 - 5.1.1.1. Lessee agrees to pay to Lessor the base rents as set forth in the schedule below during the term of this lease:

October 1, 2012 - \$500 per YEAR;
October 1, 2013 - \$515 per YEAR;
October 1, 2014 - \$530 per YEAR;
October 1, 2015 - \$546 per YEAR;
October 1, 2016 - \$574 per YEAR.
 - 5.1.1.2. Such amounts shall be payable, in advance, on the first day of each rental period.

5.1.2. **Taxes:** In addition to the base rent, Lessee shall pay to Lessor a sum equal to the total amount of all taxes or general or special assessments of whatever nature levied or assessed upon the leased premises and which Lessor shall have paid or be obligated to pay, relative to the subject property for the fiscal year (July 1 through June 30) then current.

5.2. Rent Payment:

5.2.1. Lessee agrees to pay all rent, or any other amount due under the terms of this lease, promptly when due and without deduction, offset, prior notice, or demand, to the Department of Water and Power, 300 Mandich Street, Bishop, California 93514-3449. **All payments shall reference Account No. 16551.**

5.2.1.1. Prompt payment shall mean payment at the office of Lessor not more than five (5) days after the due date for the rent as set forth in this lease. Rent due and not paid promptly shall be deemed delinquent.

5.2.2. Lessor is not required to make any demand on the Lessee for the payments, whether on the premises or elsewhere. Billing for any payment shall be for the convenience of the Lessee and not required of the Lessor.

5.2.3. Rent not paid when due shall bear interest from due date until paid, at the rate of 10/12th of 1% per month (10% per annum) from the date rent is due. Said sum shall be deemed additional rent.

5.2.4. If any check offered by the Lessee in payment of rent or any other amount due under this agreement is returned for any reason other than that caused by the Lessor's negligence, Lessee shall pay to Lessor a check return processing charge in the amount of Thirty and No/100 Dollars (\$30.00).

5.3. Special Rent:

5.3.1. In addition to the basic rent, Lessee agrees to pay a sum equal to \$0.50 per ton for all material produced on the demised premises.

5.3.1.1. All royalty rentals payable hereunder shall be paid on or before the 15th day of the month following the month in which materials are produced.

5.3.1.2. Lessee shall furnish Lessor, at the time royalty rentals are due, with a statement evidencing the amount of material produced during the preceding calendar month.

5.3.1.3. Lessor will retain the right to audit Lessee's material sales receipts.

5.3.2. Lessee further agrees that Lessor may modify the special rent condition of this lease by the Lessor giving thirty (30) days' advance notice to the Lessee that the sum the Lessee agrees to pay per ton for all material produced on the demised premises is changed.

6. **SITE PROFILE:** Lessor reserves the right to make periodic profiles of the borrow site, and any costs incurred by the Lessor shall be billed to the Lessee.

7. MATERIAL SITE REQUIREMENTS: Material site uses are subject to the following conditions:

7.1. Reclamation:

- 7.1.1. This lease is made upon the condition that the Lessee has obtained all necessary state or county permits, approvals, or authorizations prior to the commencement of any activity on the property and will, prior to any operation on the property, file with the County and receive approval of a reclamation plan which will have the effect of reclaiming the land to as near its natural condition as practicable. Lessee shall also comply with all applicable California Environmental Quality Act requirements. Nothing in this agreement shall be construed to require Lessee to reclaim any property not used in its operation.
- 7.1.2. The sides of the excavation site shall be a gradual and gentle slope, no steeper than a 3-to-1 ratio.
- 7.1.3. All reclamation requirements for this excavation site shall be met within sixty (60) days after Lessee has ceased further excavation in said location.
- 7.1.4. All excavations, sumps, etc., are to be filled in and left level with the existing terrain, and all reject material is to be appropriately disposed of under the direction of the Department.
- 7.1.5. Nothing is to be buried at the site. All debris and waste material is to be hauled away and disposed of under the direction of the Department.

7.2. Resources & Water Quality Protection:

- 7.2.1. The Lessee shall prepare and submit, in advance, to the Department for approval a Spill Prevention, Control, and Countermeasure Plan, which shall include, but not be limited to, such topics as:
 - ◆ Notifications in case of a spill
 - ◆ Response team and their responsibilities
 - ◆ Cleanup, recovery, and disposal process
 - ◆ Storage of petroleum, petroleum products, lime, or other chemical products
 - ◆ Handling and containment of scrubber water and other contaminated water
 - ◆ Measures to prevent spilled materials from reaching any surface or groundwater source
- 7.2.2. In case of accidental spills, the Bishop office of the Department of Water and Power shall be notified promptly at (760) 872-1104 during regular business hours, or the Control Gorge shall be notified at (760) 873-0450 after regular business hours or on weekends and holidays.
- 7.2.3. Accidentally contaminated material shall be disposed of according to law at the Lessee's expense.
- 7.2.4. Water quality and groundwater resources shall be protected. Water quality must comply with Regional Water Quality Control Board criteria and federal, state, and county laws and regulations.
- 7.2.5. The Lessee shall take actions necessary to protect the mined areas from erosion and water quality degradation.

- 7.2.6. All mining activity and processing facilities will be set back a minimum of 100 feet from any surface water source.
- 7.2.7. No disturbance of creek beds will be allowed without prior approval by the Department and without acquiring the proper permits from the State of California Department of Fish and Game.
- 7.2.8. Any material process or treatment (i.e., lime slurry) shall be completely self-contained, and no slurry or other by-products associated with special material process or treatment shall be dumped on the leased premises. Material or treated aggregate must be properly stored to assure site contamination is minimized.
- 7.2.9. Trees or any other vegetation shall not be cut or damaged unless expressly authorized by the Department.
- 7.2.10. Operation shall cease immediately upon discovery of any cultural or natural historic resources within the mined areas, and the Department shall be notified immediately.

7.3. Equipment:

- 7.3.1. Crusher and hot plant are to be operated in accordance with requirements set forth by the County and other regulatory bodies; and, at all times in the Lessee's use and occupancy of the premises, Lessee shall comply with all laws, statutes, ordinances, rules, and regulations applicable thereto, enacted, and adopted by federal, state, regional, municipal, or other governmental bodies, or departments, or offices thereof.
- 7.3.2. Contractor's crusher and hot plant shall be removed within sixty (60) days of completion of the project. The entire material site is to be contoured to the satisfaction of the Department at the conclusion of Lessee's use of said material site. All extensions beyond the termination date of this agreement must be by written approval of the Department.
- 7.3.3. The Lessee shall ensure that no storage of contractor's or subcontractor's equipment is permitted within the boundaries of the material site after the project is completed without prior written authorization of the Department.

7.4. Fire:

- 7.4.1. The Lessee shall take immediate and independent action to prevent and suppress wildland fires in the area of operations.
- 7.4.2. The Lessee shall ensure that all equipment on the leased premises is in compliance with current federal and state fire laws and regulations.
- 7.4.3. The Lessee shall be responsible for the total cost of suppression of and damage caused by fire, caused by or permitted to spread due to negligence or fault of its operation, including—but not limited to—smoking and warming fires, or failure to comply with the fire precautions and requirements identified herein.

7.5. Signage:

7.5.1. The Lessee shall ensure that the area is properly posted with signs warning the public of safety hazards relating to blasting, traffic, and/or other mining operations. All signs must be approved by the Department for content and location prior to posting.

7.6. Import of Material:

7.6.1. No material shall be brought onto the site for use or storage without prior written approval of the Department due to concerns about spreading noxious weeds, and constraints of the Surface Mining and Reclamation Act as administered by Inyo and Mono Counties.

7.6.2. If Lessee is contemplating a construction job that could result in Lessee removing material from a job site for deposit on the leased premises, Lessee must request permission, in writing, prior to performing this activity.

- ◆ The Lessee's written request must include a) the location from which the material is to be removed; b) a description of the material to be deposited on the leased premises; c) Lessee's intentions for this material; and d) the date the Lessee needs permission by so that the Department can expediently process the request. The Department will either respond with a letter of permission if this activity is acceptable, or will issue a letter of denial with an explanation of the decision.
- ◆ The permission must be requested prior to the job site being disturbed so that a member of the Department's Water Resources staff can inspect the site.

7.7. Ownership of Unprocessed Material:

7.7.1. The Lessee, in leasing the premises for purposes of a sand and gravel operation, is acquiring only a right to remove material from the land for the purpose of processing it for sand and gravel on the leased premises and paying a royalty thereon as specified in this agreement in the paragraph entitled *Special Rent*. By entering into this agreement for said purpose, Lessee is not and does not acquire any right, title, or interest in the material in an unprocessed form. Lessee shall not sell, give away, or dispose of in any manner any unprocessed material, whether on the premises, removed from the premises, or otherwise. It is specifically recognized and agreed that any and all right to remove material from the land and/or to process material expires upon the termination of this agreement.

7.8. General:

7.8.1. The Lessee shall be responsible for contractor/subcontractor actions on leased premises.

7.8.2. No material may be sold, given away, or otherwise removed for purposes other than use in connection with the designated use of this agreement without prior written agreement with the Department.

- 7.8.3. All areas cleared, excavated, or disturbed for use in relation to providing aggregates, including work areas and haul roads, shall be watered sufficiently—at all times—to prevent blowing dust.
- 7.8.4. The Lessee, in the exercise of the privileges granted by use of Department land, shall require that its employees, sublessees, contractors, subcontractors, and their employees comply with all applicable terms and conditions of this agreement, and that said agreement shall be made a part of all contracts for use of the site.
- 7.8.5. The area of use shall be maintained in a safe, clean, and neat condition. Trash, debris, unusable machinery, improvements, etc., will be disposed of properly in a timely manner.
- 7.8.6. The Lessee shall perform all operations in a workmanlike manner, having due regard for the safety of employees, and shall safeguard—with fences, barriers, fills, covers, or other effective devices—pits, cuts, and other excavations which otherwise would unduly imperil the life, safety, or property of other persons.
- 7.8.7. The Lessee will be responsible for any unauthorized removal of material resulting from failure to maintain site security, and shall be billed accordingly.
- 7.8.8. Construction water may be available upon request; arrangements must be made through the Department's Commercial office in Bishop.

8. NOTICES:

- 8.1. Any notice to be given hereunder by either party to the other shall be in writing, and either served personally or sent by prepaid first-class mail. Any such notice shall be addressed as follows:

To Lessor:

Los Angeles Department of Water and Power
Real Estate Section
300 Mandich Street
Bishop, California 93514-3449

To Lessee:

County of Inyo
Public Works Department
P.O. Drawer Q
Independence, California 93526

- 8.2. Or to such other address as Lessor and Lessee may hereafter designate by written notice. Notice shall be deemed communicated within twenty-four (24) hours from the time of mailing if mailed as provided in this paragraph.

ARTICLE II. STANDARD TERMS AND PROVISIONS

1. LIMITATIONS/RESERVATIONS:

- 1.1. Limitations on Use of Leased Premises: Lessee shall not use the premises, nor any portion thereof, for any purpose other than that hereinabove set forth in Article 1 without first having had and obtained the written consent of the Board of Water and Power Commissioners of the City of Los Angeles (Board), whose consent may be withheld in the Board's sole discretion.
- 1.2. Reservations: This lease is subject to all existing uses, all matters of record, and to the reservations hereinafter set out.
 - 1.2.1. There is excepted from this lease and reserved to the Lessor all water and water rights, whether surface, subsurface, or of any other kind; and all water and water rights appurtenant or in anywise incident to the lands or premises leased herein, or used thereon or in connection therewith, together with the right to develop, take, transport, control, regulate, and use all such water and water rights.
 - 1.2.2. There is also excepted and reserved to the Lessor the right to use, operate, and maintain any ways, waterways, ditches, pipelines, canals, wells, and appurtenances thereto, or desirable in connection therewith, together with the right to grant easements, rights of way, licenses, and permits for other purposes that will not unreasonably interfere with Lessee's use of the premises.

2. IMPROVEMENTS:

- 2.1. Lessee Improvements and Alterations:
 - 2.1.1. Lessee shall make no structural improvements, additions, or alterations in, to or upon the leased premises without first obtaining the written consent of the Aqueduct Manager of the Los Angeles Department of Water and Power (Manager). Any conditions, restrictions, or limitations placed upon the approval by the Lessor shall be conditions of this lease as though fully set forth herein once the document is fully executed by both parties. Lessee shall hold the Lessor harmless from liability with respect to any claims regarding any improvements, additions, or alterations made thereto.
 - 2.1.2. Prior to the construction of any improvements, Lessee shall submit to Lessor's Real Estate Section in Bishop, California (Real Estate Section), for concept approval, the preliminary plans and estimated construction cost for such improvements. Said approval, subject to the conditions set forth herein, shall be given in writing, in a reasonably timely manner. Upon approval by the Manager of Lessee's preliminary plans, Lessee shall prepare working drawings and specifications, which shall be true and correct developments of the preliminary plans so approved. Lessee shall then submit a written request for construction approval and a minimum of two (2) complete sets of said approved working drawings and copies of the specifications to the Real Estate Section for written approval by the Manager. Manager's written approval and any conditions related to the construction of the improvements or alterations shall become a part of the

lease as though fully set forth herein once the document is fully executed by both parties. Upon receipt of approval, Lessee shall cause the construction called for by the approved working drawings and specifications to be commenced and completed promptly. No substantial changes, additions, or alterations shall be made in said working drawings or specifications, or in the construction called for thereby, without first obtaining the Manager's approval in writing. Upon completion of the improvements, Lessee shall furnish to the Real Estate Section, at no charge, one complete set of "as-built" drawings. These drawings must include any applicable permit numbers, the structural and other improvements installed by Lessee in the leased premises, and the location and details of installation of all improvements, equipment, utility lines, heating, ventilating, and air-conditioning ducts and related matters. Lessee shall keep said drawings current by updating them in order to reflect any changes or modifications, which may be made in or to the leased premises.

2.1.3. For each and every construction or alteration project undertaken on the leased premises, Lessee shall prepare a construction report. This report shall contain the following elements: (1) type of improvement constructed or altered; (2) floor area or capacity of improvement constructed or altered; (3) total cost of construction or alteration; (4) completion date for construction or alteration; and (5) a copy of the certificate of occupancy. The construction report shall be mailed to the Lessor at the address provided in this lease in Article I, *Notices* section, not later than sixty (60) days following completion of the construction or alteration.

2.1.4. Lessee shall also keep the leased premises and any improvements constructed thereon free and clear of liens for labor and material expended by or for Lessee or on its behalf in accordance with Article II, *Liens* section.

2.2. Ownership of Improvements:

2.2.1. During the term the property is leased, title to all structures, improvements, facilities, or alterations constructed or installed by Lessee shall be vested to Lessee. Upon the termination of the lease tenancy, said structures, improvements, facilities, or alterations, other than machines, equipment, trade fixtures, and similar installations of a type commonly removed without structural damage to the leased premises, shall become a part of the land upon which they are constructed, or of the building to which they are affixed, and title thereto shall thereupon vest in the Lessor unless, however, Lessor may request Lessee to remove some or all of said structures, improvements, facilities, or alterations, in which case Lessee shall promptly remove said items at Lessee's sole cost and expense. In the event the removal of any fixture damages any part of the leased premises, Lessee shall repair such damage and restore the leased premises to as good condition as the same was in prior to said damage, reasonable wear and tear excepted.

2.2.2. During the term of this lease, title to all structures, improvements, facilities, or alterations constructed or installed by Lessee for which Lessee has been reimbursed by the Lessor shall thereupon vest in the Lessor.

2.2.3. Upon vesting of title to said structures, improvements, facilities, or alterations in the Lessor, Lessor shall be entitled to additional reasonable

rent, fees and/or other charges, as determined by the Board, and Lessee shall be obligated to pay same for as long as Lessee occupies said structures, improvements, facilities and alterations.

2.3. Damage to or Destruction of Improvements:

2.3.1. If, during the term of this lease, any buildings, structures, or improvements on the leased premises, whether such improvements are Lessee- or Lessor-owned, are partially or totally destroyed from a risk covered by the insurance described in Article II, *Insurance* section, herein, thereby rendering said leased premises partially or totally inaccessible or unusable, such destruction shall not automatically terminate this lease, and Lessee, unless otherwise directed by the Lessor, shall be obligated to restore the leased premises to substantially the same condition as they were immediately before destruction. Approval from the Lessor for reconstruction of such improvements shall be in accordance with Article II, *Lessee Improvements and Alterations subsection* of this lease and shall not unreasonably be withheld.

2.3.2. If, during the term of this lease, any improvements on the leased premises, whether such improvements are Lessee- or Lessor-owned, are partially or totally destroyed from a risk not covered by the insurance described in Article II, *Insurance* section, herein, thereby rendering said leased premises partially or totally inaccessible or unusable, such destruction shall not automatically terminate this lease. If, however, the cost of restoration exceeds ten percent (10%) of the full replacement value of improvements, as said value existed immediately before said destruction, Lessee may, at Lessee's option, terminate this lease by giving written notice to the Lessor within sixty (60) days from the date of destruction. If Lessee elects to terminate as above provided, Lessee shall be obligated, unless otherwise directed by the Lessor, to demolish all damaged improvements and remove all debris from the leased premises at Lessee's sole cost. If Lessee fails to exercise its right to terminate this lease, this lease shall continue in full force and effect for the remainder of the term specified herein and Lessee shall restore the leased premises to substantially the same condition as they were in immediately before destruction. Approval from the Lessor for reconstruction of such improvements shall be in accordance with Article II, *Lessee Improvements and Alterations subsection* of this lease and shall not unreasonably be withheld.

2.3.3. Lessee expressly waives the provisions of Civil Code Sections 1932.2 and 1933.4.

3. **LIENS:** During the term of this lease, the fee interest in the real property underlying the leased premises shall not be used as security for any loans or mortgages nor otherwise have any liens placed on it. Additionally, Lessee shall keep any Lessor-owned improvements on the leased premises free and clear of any liens or other encumbrances. By way of specification without limitation, Lessee shall keep the leased premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Lessee, and shall indemnify, hold harmless, and defend the Lessor from any liens and encumbrances arising out of any work performed or materials furnished by or at the request of Lessee. In the event that Lessee does not, within thirty (30) calendar days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, the Lessor shall have, in addition

to all other remedies provided herein and by law, the right, but not the obligation, to cause upon ten (10) business days prior written notice to Lessee the same to be released by such means as it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. All such sums paid by the Lessor and all expenses incurred by it in connection therewith, including costs and attorney's fees, shall be paid by Lessee to the Lessor on demand. Nothing in this Section shall be construed to limit any rights of Lessee to use its leasehold interest as security for any loans to the extent that such use is permitted under this lease. Nothing in this Section shall be construed to place any obligations upon Lessee with respect to liens, loans, or mortgages placed upon the leased premises by the Lessor, its Board, City officers, agents, or employees.

4. **MODIFICATION TO SIZE OF LEASED PREMISES:** It is mutually agreed that land not exceeding ten percent (10%) of the total area of the premises herein leased may be added to or deleted from said leased premises upon approval of the Manager and without requiring additional action by the Board of Water and Power Commissioners unless the modification involves an amount in excess of \$150,000 per year, in which case prior Board approval shall be required. In all instances said changes shall become effective immediately upon written notice to Lessee. The amount of rent payable under this lease shall be increased or decreased on a pro rata basis to reflect any such addition to or deletion of lands.
5. **SIGNS:**
 - 5.1. No identification signs pertaining to Lessee's operations shall be installed or placed in or on the leased premises until Lessee has submitted to the Real Estate Section drawings, sketches, design dimensions, and type and character of such identification signs proposed to be placed thereon or therein and has received written approval from the Real Estate Section. The Real Estate Section's written approval and any conditions related to the subject signs shall become a part of the lease as though fully set forth herein once the document is fully executed by both parties.
 - 5.2. Other than approved identification signs, Lessee shall not, at any time, under any circumstances, install, place, or maintain any type of advertising, on the leased premises.
6. **LAWS, RULES, AND REGULATIONS:**
 - 6.1. Lessee shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local government authority.
 - 6.2. Lessee shall be solely responsible for any and all civil and/or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations and/or restrictions related to its use or operation of the leased premises, or with any ordinances, statutes, laws, orders, directives and or conditions.
7. **CARE, MAINTENANCE, AND REPAIR OF LEASED PREMISES:**
 - 7.1. Care of Premises:
 - 7.1.1. Lessee is the current tenant and has examined the premises, knows the condition thereof, and accepts possession thereof in its present condition relying solely on its own inspection and not on any representations that may have been made by the Lessor or any of its agents.

- 7.1.2. Lessee agrees at its cost to keep the premises in good, clean, orderly, and sanitary condition, and shall not commit nor allow to be committed any waste, nuisance, or disposal of hazardous material or wastes upon the premises. Lessee further agrees to remove from the leased premises anything placed or stored there which Lessor considers to be undesirable or unsightly.
- 7.1.3. Any restoration of or repairs to the premises made necessary by the installation or removal of any structure, personal property, alteration, or trade fixture owned, placed, attached, or installed by Lessee on the premises shall be made at Lessee's sole cost and expense.

7.2. Maintenance and Repair:

- 7.2.1. As part of the consideration for this lease, Lessee agrees, at all times hereunder and at its own expense, to keep, maintain, paint, and repair the leased premises and all improvements thereon, if there be any whether owned by Lessor or Lessee, in as good and substantial condition and state of repair as the same now are or in such improved condition as the same may hereafter be placed, reasonable wear and tear and damages by causes beyond Lessee's control excepted, except that regardless of the present condition or state of repair and regardless of the reasonableness or cause of wear, tear, or damages, Lessee shall keep and maintain, at all times hereunder and at its own expense, the premises and all improvements and facilities thereon in as good condition and repair as may be necessary for the safety of all persons who may lawfully enter thereupon.
- 7.2.2. If Lessee fails to so maintain or repair the leased premises, the Lessor may serve a "Notice to Cure" upon Lessee. Said Notice shall prescribe the work to be accomplished by Lessee in order to correct the maintenance deficiencies and shall state the number of calendar days Lessee shall have to complete the work as prescribed in the Notice. The period of "calendar days" in said Notice shall commence ten (10) days following Lessor's deposit of said Notice in the mail. In addition, a copy of the "Notice to Cure" shall be posted on the leased premises in a conspicuous place.
- 7.2.2.1. If, in the opinion of the Lessor, any default is of such nature that it cannot physically be corrected within the period originally specified by the Lessor, and if the party in default has responded with a course of action and has commenced to remedy such default promptly after the receipt of such Notice, and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete the same.
- 7.2.2.2. If the work prescribed in the "Notice to Cure" is not completed by Lessee in a manner reasonably satisfactory to the Lessor, and Lessee fails to correct such work within the time specified by the Lessor in the mailed Notice, or as set forth in this Section, the Lessor may, at its sole option, and at Lessee's sole cost and expense, enter upon the leased premises and perform whatever work may, in the opinion of the Lessor, be required to correct the maintenance deficiencies. If the Lessor

exercises this option, Lessee shall pay to the Lessor a sum equal to the direct cost of labor and materials expended for said work, plus a surcharge equal to fifty percent (50%) of said direct cost. Payment shall be made within thirty (30) days of the date of the Lessor's invoice date for such costs and charges.

7.2.3. In the absence of a written agreement to the contrary, Lessor shall not be required at any time to maintain, paint, or make repairs, improvements, alterations, or additions on or to the leased premises. Lessor reserves the right, however, at any time to perform such maintenance or make such repairs or perform such other acts on or to the premises as shall be by Lessor deemed necessary for the preservation of any portion thereof, or the protection of Lessor's investment therein, and the further right to remove trees, weeds, and other things which Lessor may deem to be unsightly or undesirable; but such works performed by Lessor shall constitute, in no event, a waiver of Lessee's obligation hereunder to keep said premises in good repair and free from rubbish, noxious weeds, and other unsightly matter.

7.2.4. **Lessee waives the provisions of Civil Code Sections 1941 and 1942 with respect to the Lessor's obligations for tenantability of the premises and Lessee's right to make repairs and deduct the expenses of such repairs from rent.**

LESSEE INITIALS

7.2.5. Should Lessor make or perform any repairs, removals, or maintenance, or agree at the request of Lessee to perform maintenance, repairs, alterations, construction, or other works of improvement on the leased premises, Lessor may, at its option, perform such works and either bill Lessee for the entire costs of same, which Lessee agrees to pay on demand, or Lessor may, upon thirty (30) days' written notice to Lessee, increase the lease rental by an amount necessary for Lessor to recover all or part of the cost of such works, as Lessor shall determine, over the remaining term of this lease, or any lesser portion thereof as Lessor shall determine.

7.3. Tree Maintenance: Lessee shall spray trees as needed for pest control, and maintain and trim trees for safe condition near buildings. No tree shall be cut down without the Lessee first receiving written permission from the Lessor to do so.

7.4. Burn Permits: Lessee shall not burn off any part of the premises without a burning permit first being obtained from Lessor and any other regulatory authority having jurisdiction; and Lessee, at all times and at its own expense, shall do all things reasonably necessary to protect said premises from fire and fire hazards.

8. DISABLED ACCESS:

8.1. Lessee shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access to improvements on the leased premises, including any services, programs, or activities provided by Lessee. Lessee shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, Lessee's noncompliance.

- 8.2. Should Lessee fail to comply with this Section, then the Lessor shall have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Lessee will then be required to reimburse the Lessor for the actual cost of achieving compliance, plus a fifteen percent (15%) administrative charge.

9. HAZARDOUS SUBSTANCES:

9.1. Indemnification – Environmental: Lessee, on behalf of itself and its successors, assigns, and sub-lessees, further undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers, agents, successors in interest, insurers, assigns and/or employees (individually and collectively, "Indemnitees"), and at the option of the Lessor, defend by counsel satisfactory to the Lessor the Indemnitees from and against any and all liens and claims of lien, suits, causes of action, claims, charges, damages, demands, judgments, civil fines, penalties (including, but not limited to, costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation, penalties, and fines arising from the violation of any local, regional, state, or federal law, or regulation, disbursements, and other environmental response costs), or losses of any kind or nature whatsoever that are incurred by or asserted against the Indemnitees, for death, bodily injury or personal injury to any person, including Lessee employees, contractors, customers, invitees, and agents, or persons who enter onto the premises, or damage or destruction or loss of use of any property of either party hereto, or third persons in any manner arising by reason of, incident to, or connected in any manner to the acts, errors, omissions to act, willful misconduct, or non-performance or breach by Lessee of any term and/or condition of this agreement, relating directly or indirectly to the release or spill of any legally designated hazardous material or waste, resulting from or incident to the presence upon or performance of activities by Lessee or its personnel with respect to the subject area/property covered under this agreement, on the part of the Lessee, or Lessee's officers, agents, employees, or sub-lessees of any tier, regardless of any negligence on the part of Indemnitees, except for the sole active negligence or willful misconduct of the Indemnitees. It is the specific intent of this paragraph that this Indemnification shall apply and be effective for all accidents, occurrences, and/or events occurring during the term of this agreement that give rise to future claims, even if the actual claim comes against the Indemnitees after the agreement has expired or terminated. This Indemnification shall be in addition to any other rights or remedies that Indemnitees have under law or under this agreement.

9.2. Survival of Obligations: This Section, and the obligations herein, shall survive the expiration or earlier termination of this lease.

10. LESSOR'S RIGHT OF ACCESS AND INSPECTION: The Lessor, by and through its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times and in a reasonable manner, upon notice to Lessee, to enter upon the leased premises for the purpose of inspecting the same or for doing any act or thing that the Lessor may be obligated or have the right to do under this lease, or otherwise, and no abatement of rental shall be claimed by or allowed to Lessee by reason of the exercise of such rights. In the exercise of its rights under this Section, the Lessor, its officers, employees, agents, and contractors shall not unreasonably interfere with the conduct of Lessee's business on the leased premises as herein authorized.

11. INSURANCE:

- 11.1. Additional Insured Status Required: Lessee shall procure at its own expense, and keep in effect at all times during the term of this lease, the types and amounts of insurance specified on the attached *Exhibit B (Contract Insurance Requirements)*. The specified insurance shall also, either by provisions in the policies, by the Lessor's own endorsement form, or by other endorsement attached to such policies, include and insure the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, its Board of Water and Power Commissioners, and all of its officers, employees, and agents, their successors and assigns, as additional insureds (except for Professional Liability and Workers' Compensation), against the area(s) of risk described herein as respects Lessee's acts or omissions in its performance of the lease, use and occupancy of the premises hereunder, or other related functions performed by or on behalf of Lessee. Such insurance shall not limit or qualify the liabilities and obligations of the Lessee assumed under the lease.
- 11.2. Severability of Interests and Cross Liability Required: Each specified insurance policy (other than Workers' Compensation and Employers' Liability and Property coverages) shall contain a Severability of Interest and Cross Liability clause that states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability"; and a Contractual Liability Endorsement that shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."
- 11.3. Primary and Non-Contributory Insurance Required: All such insurance shall be Primary and Noncontributing with any other insurance held by the Lessor where liability arises out of, or results from, the acts or omissions of Lessee, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Lessee. Any insurance carried by the Lessor, which may be applicable, shall be deemed to be excess insurance and the Lessee's insurance is primary for all purposes despite any conflicting provision in the Lessee's policies to the contrary.
- 11.4. Deductibles Subject to Lessor's Discretion: Deductibles and/or self-insured retentions shall be at the sole risk of the Lessee. Lessor shall have no liability for any premiums charged for such coverage(s). The inclusion of the Department of Water and Power of the City of Los Angeles, its Board of Water and Power Commissioners, and all of its officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Lessee in its operations.
- 11.5. Proof of Insurance for Renewal or Extension Required: At least ten (10) days prior to the expiration date of any of the policies required on the attached *Exhibit B (Contract Insurance Requirements)*, documentation showing that the insurance coverage has been renewed or extended shall be filed with Lessor. If such coverage is canceled or not renewed, Lessee shall, within fifteen (15) days of such cancellation or non-renewal, file with Lessor evidence that the required insurance has been reinstated or provided through another insurance company or companies.
- 11.6. Submission of Acceptable Proof of Insurance and Notice of Cancellation: Lessee shall provide proof to the Risk Manager of the Department of Water and Power of the City of Los Angeles of all specified insurance and related requirements either by use of Lessor's own endorsement form(s) or by other written evidence of insurance

acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverages shall be filed with Lessor prior to Lessee beginning operations or occupying the premises hereunder. Said proof shall contain, at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for the Lessor, and the insurance carrier's name. Such documents shall bear an original signature of an authorized representative of said carrier(s). Required policies shall provide for notice of cancellation or non-renewal by mail to: The Office of the City Attorney, Water and Power Division, Post Office Box 51111, JFB – Room 340, Los Angeles, California 90051-0100.

- 11.7. Claims-Made Insurance Conditions: Should any portion of the required insurance be on a "Claims Made" policy, the Lessee shall, at the policy expiration date following the lease term, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended two (2) years discovery period has been purchased on the expiring policy.
- 11.8. Failure to Maintain and Provide Proof as Cause for Termination: Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of the lease, upon which Lessor may immediately terminate or suspend the lease.
- 11.9. Sub-Contractor Compliance: The Lessee shall be responsible for all Lessee's sub-contractors providing work hereunder carrying reasonable and prudent coverages and limits.
- 11.10. Periodic Right to Review/Update Insurance Requirements: Lessor and Lessee agree that the insurance policy limits specified on the attached *Exhibit B (Contract Insurance Requirements)* may be reviewed for adequacy annually throughout the term of this lease by the Risk Manager/City Attorney, who may thereafter require Lessee to adjust the amounts and types of insurance coverage(s) to whatever extent the Risk Manager/City Attorney deems to be adequate and necessary. Lessor reserves the right to have submitted to it, upon request, all pertinent information about the agent(s) and carrier(s) providing such insurance, including applicable license(s) and ratings.

12. **LESSOR HELD HARMLESS / INDEMNIFICATION**: In addition to the requirements of Article II, *Insurance* section herein, Lessee acknowledges that it has inspected the premises, knows the condition thereof, and on behalf of itself and its successors, assigns and sub-lessees undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers, agents, successors in interest, insurers, assigns and/or employees (individually and collectively, "Indemnitees"), and at the option of the Lessor, defend by counsel satisfactory to the Lessor, the Indemnitees from and against any and all liens and claims of lien, suits, causes of action, claims, charges, damages (including but not limited to indirect, consequential, and incidental), demands, judgments, civil fines, penalties, or losses of any kind or nature whatsoever that are incurred by or asserted against the Indemnitees, for death, bodily injury or personal injury to any person, including but not limited to Lessee's employees, contractors, customers, invitees and agents, or persons who enter onto the premises, or damage (including environmental damage) or destruction or loss of use of any property of either party hereto, or third persons in any manner arising by reason of, incident to, or connected in any manner to this agreement or to the premises covered under this agreement, regardless of any negligence on the part of Indemnitees, except for the sole active negligence or willful misconduct of the Indemnitees. It is the specific intent of this paragraph that this

Indemnification shall apply and be effective for all accidents, occurrences, and/or events occurring during the term of this agreement that give rise to future claims, even if the actual claim comes against the Indemnitees after the agreement has expired or terminated. This Indemnification shall be in addition to any other rights or remedies that Indemnitees have under law or under this agreement.

13. CITY OF LOS ANGELES ORDINANCE-MANDATED PROVISIONS

- 13.1. Non-Discrimination: During the term of this lease, the Lessee shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, sexual orientation, age disability, marital status, domestic partner status, or medical condition. Any subleases shall contain a like nondiscrimination clause. The applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60-741 of 41 CFR pertaining to handicapped workers, including 60-741.4 Affirmative Action Clause; and Sections 10.8 to 10.13 of the Los Angeles Administrative Code pertaining to nondiscrimination in employment in the performance of City contracts are incorporated herein by reference and made a part hereof as if they were fully set forth herein.
- 13.2. Affirmative Action Plan: Lessee shall have, as per Los Angeles Administrative Code Section 10.8.4, an Affirmative Action Plan on file with the Director of Corporate Purchasing Services. Lessee's Plan shall be submitted on the Lessor's form, available from the Director of Corporate Purchasing Services.
- 13.3. Child Support Assignment Orders: Lessee shall comply with Section 10.10, of the Los Angeles Administrative Code ("Child Support Assignment Orders"). Lessor requires all lessees and sublessees entering into a contract with Lessor to comply with all reporting requirements and court-ordered wage earning assignments.
- 13.4. Service Contractor Worker Retention Ordinance (SCWRO) and Living Wage Ordinance: Under provisions of Section 10.36 et seq., and Section 10.37 et seq. of the Los Angeles Administrative Code, all employers (except where specifically exempted) under contracts primarily for the furnishing of services to or for the Lessor and that involve an expenditure in excess of \$25,000 and a contract term of at least three months; leases; licenses; or, certain recipients of Lessor financial assistance, shall comply with all applicable provisions of the Ordinances. Lessor shall have the authority, under appropriate circumstances, to terminate the contract and otherwise pursue legal remedies that may be available, if Lessor determines that the subject contractor or financial recipient violated the provisions of the referenced Code Section.
- 13.5. Equal Benefits Ordinance: This lease is subject to Section 10.8.2.1 of the Los Angeles Administrative Code related to equal benefits to employees. Lessee agrees to comply with the provisions of Section 10.8.2.1.
- 13.6. Slavery Disclosure Ordinance: This lease is subject to the applicable provisions of the Slavery Disclosure Ordinance (SDO) Section 10.41, et seq., of the Los Angeles Administrative Code. Unless otherwise exempt in accordance with the provisions of this Ordinance, Lessee certifies that it has complied with the applicable provisions of the Ordinance. Under the provisions of Section 10.41.2(b) of the Los Angeles Administrative Code, Lessee has the authority, under appropriate circumstances, to terminate this lease and otherwise pursue legal remedies that may be available to Lessor if Lessor determines that the Lessee failed to fully and accurately complete the SDO affidavit or otherwise violated any provision of the SDO.

14. TAXES

14.1. General:

- 14.1.1. Lessee shall pay any and all taxes of whatever character that may be levied or charged upon Lessee's improvements, fixtures, equipment, or other property thereon or upon Lessee's use thereof.
- 14.1.2. Lessee shall also pay all license or permit fees necessary or required by law or regulation for the conduct of Lessee's business or use of the leased premises.
- 14.1.3. If a claim is made against the Lessor for any of the above charges, the Lessor shall promptly notify Lessee in writing; provided, however, that failure by the Lessor to give such notice shall not constitute a waiver of Lessee's obligation to pay such taxes, license and/or permit fees.

- 14.2. Special Assessments: In the event any special assessments or taxes are levied against the leased premises by a district, special district, assessment district, or any other political entity or public corporation with power to levy taxes and/or assessments, such as a watermaster service or a water district, Lessor shall pay said taxes and/or assessments, and said payment, unless the Lessor shall otherwise find and determine, will be added to the basic rental at the beginning of any rental period.
- 14.3. Substitute and Additional Taxes: If at any time during the term of this lease the State of California or any political subdivision of the state, including any county, city, public corporation, district, or any other political entity or public corporation of this state, levies or assesses against Lessor a tax, fee, or excise on rents on the square footage of the premises on the act of entering into this lease or on the occupancy of Lessee, or levies or assesses against Lessor any other tax, fee, or excise, however described, including, without limitation, a so-called value-added tax, as a direct substitution in whole or in part for or in addition to any real property taxes, Lessee shall pay before delinquency that tax, fee, or excise. Lessee's share of any such tax, fee, or excise shall be substantially the same as Lessee's proportionate share of real property taxes as provided in this lease.
- 14.4. Possessory Interest Tax: By executing this agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest," and such property interest will be subject to property taxation. Lessee, as the party in whom the possessory interest is vested, will be subject to the payment of the property taxes levied upon such interest. Lessee herewith acknowledges that by this paragraph, the Lessor has provided notice of possessory liability as required by Revenue and Taxation Code Section 107.6.
- 14.5. The obligations of Lessee under this Section, however, shall not prevent Lessee from contesting the validity and/or applicability of any of the above charges and during the period of any such lawful contest, Lessee may refrain from making, or direct the withholding of, any such payment without being in breach of the above provisions. Upon a final determination in which Lessee is held responsible for such taxes and/or fees, Lessee shall promptly pay the required amount plus all legally imposed interest, penalties and surcharges. If all or any part of such taxes and/or fees, penalties, or surcharges are refunded to the Lessor, the Lessor shall remit to Lessee such sum(s) to which Lessee is legally entitled.

15. UTILITIES: Lessee agrees to promptly pay all charges for public utility services furnished for use on the premises and any other charges accruing or payable in connection with Lessee's use and occupancy of the premises.

16. ASSIGNMENTS AND SUBLEASES:

16.1. Lessee shall not, in any manner, assign, transfer, or encumber this lease, or any portion thereof or any interest therein, nor sublet or sublease the whole or any part of the leased premises, nor license or permit the use of the same, in whole or in part, without the prior written consent of the Lessor. Any attempts to transfer, assign, or sublease without the consent required by this Section shall be void and shall transfer no rights to the leased premises. Consent to one assignment, subletting, or use, or occupation shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use. This lease shall not, nor shall any interest therein, be assignable as to the interest of Lessee by operation of law without the prior written consent of the Lessor.

16.2. Involuntary Assignment:

16.2.1. No interest of Lessee in this lease shall be assignable by operation of law (including, without limitation, the transfer of this lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

16.2.1.1. If Lessee is or becomes bankrupt or insolvent; makes an assignment for the benefit of creditors; institutes, or is a party to, a proceeding under the Bankruptcy Act in which Lessee is the bankrupt or debtor; or, if Lessee is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

16.2.1.2. If a writ of attachment or execution is levied on this lease; or

16.2.1.3. If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the premises.

16.2.2. An involuntary assignment shall constitute a default by Lessee, and Lessor shall have the right to elect to terminate this lease, in which case this lease shall not be treated as an asset of Lessee. If a writ of attachment or execution is levied on this lease, Lessee shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

16.3. Corporation or Partnership:

16.3.1. If Lessee is a corporation, this lease is to the corporation as it currently exists. Any dissolution, merger, consolidation, or other reorganization of Lessee, or the sale or other transfer of stock ownership of the corporation, voluntary, involuntary, or by operation of law, greater than ten percent (10%) shall be deemed a voluntary assignment of this lease and, therefore, subject to the provisions of this lease as to voluntary assignment thereof,

including that provision requiring Lessor's prior written consent. This paragraph shall not apply to corporations the stock of which is traded through an exchange.

16.3.2. If Lessee is a partnership, this lease is to the partnership as it currently exists. A withdrawal or change, voluntary, involuntary, or by operation of law, of any partner, or the dissolution of the partnership shall be deemed a request to assign this lease and, therefore, subject to the provisions of this lease as to voluntary assignment thereof.

16.4. Each request for consent to an assignment shall be in writing, accompanied by the following:

16.4.1. A copy of the purchase/sale agreement, which shall include a detailed list of the assets that comprises the sales price.

16.4.2. A copy of the escrow instructions pertaining to the transaction.

16.4.3. Information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee, including but not limited to the intended use and/or required modification of the premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request.

16.4.4. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

16.5. In the case of an assignment, Lessee shall pay to the Lessor any monetary or other economic consideration received by Lessee that is attributed to the leasehold as an asset. Said amount shall be over and above the amount of Lessee's rental and other payments due the Lessor pursuant to this lease.

16.6. In the case of a sublease, it shall not be deemed to be an unreasonable restraint by the Lessor, as a condition to the Consent to Sublease, for the Lessor to require that Lessee pay to the Lessor a percentage, to be negotiated, of any monetary or other economic consideration received by Lessee as a result of the sublease over and above the amount of Lessee's rental and other payments due the Lessor pursuant to this lease.

17. CONDEMNATION: The parties hereby agree that if the leased premises, or any portion thereof, or any interest therein, are taken by eminent domain for public use, or otherwise, by any governmental authority, or by a "quasi-public entity" having the power of condemnation, or sold to a governmental authority threatening to exercise the power of eminent domain, this lease, and Lessee's obligation to pay rent hereunder, shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs, and the rent, fees and/or other charges hereunder shall be apportioned and paid to the date of such taking. A taking of the leased premises includes the taking of easements for air, light and any other easements in the land, including, but not limited to an impairment or taking of access to adjoining streets.

- 17.1. Effect of Partial Condemnation: In the event a portion of the leased premises are appropriated or taken and Lessee, at its sole discretion, determines that the remainder thereof is not suitable for the continued use of the leased premises by Lessee for conducting Lessee's operations thereon in the same manner and extent as carried on prior to such taking, Lessee shall have the right to terminate this lease upon giving Lessor written notice of its intent to exercise said right. Said notice shall be given not more than one hundred twenty (120) days following the date of service of a complaint in eminent domain upon Lessee, or one hundred twenty (120) days following the Lessor's demand that Lessee acknowledge its intent to terminate this lease, unless the Lessor and Lessee agree, in writing, to an earlier termination or to extend said period. If Lessee exercises its right to terminate this lease pursuant to this Subsection, Lessee shall give the Lessor thirty (30) days prior written notice of the effective date of said termination.
- 17.1.1. If, in the event of such taking of a portion of the leased premises, Lessee does not terminate this lease, this lease shall continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term, subject to adjustment as provided elsewhere in this lease, shall be as follows: the land and improvement rental shall be reduced in the same proportion as the land taken by eminent domain bears to the area of the leased premises before the taking.
- 17.1.2. In determining whether a partial condemnation renders the remainder of the leased premises unsuitable for the use then being made of the leased premises by Lessee, Lessee, among other things, shall take into consideration the cost of restoration, the rentable area of the remaining improvements and the suitability of the remaining leased premises for conducting Lessee's operations thereon in the same manner and extent as carried on prior to such taking.
- 17.1.3. Except as provided for in Article II, *Ownership of Improvements* subsection hereof, should Lessee terminate this lease pursuant to this Section, title to all improvements, additions or alterations constructed or installed by Lessee upon the leased premises and which have not already vested in the Lessor shall thereupon vest in the Lessor.
- 17.2. Application of Award Upon a Total or Partial Taking:
- 17.2.1. If this lease is terminated pursuant to this Section, or, if all or a portion of the leased premises are taken, then the entire award or compensation paid for land, improvements, and buildings owned by the Lessor, the amortized portion of the value of buildings and improvements built by Lessee and which will become the property of the Lessor upon termination of this lease, shall be the property of the Lessor.
- 17.2.2. Lessee shall have the right to receive compensation for the unamortized value of the buildings and any improvements that are still owned by Lessee and that were placed on the leased premises by Lessee and located thereon at the time of such taking or appropriation, and for its trade fixtures, equipment, and supplies, and for loss or damage to Lessee's business goodwill. The "amortized value" that the Lessor shall be entitled to receive is a portion of the award for said Lessee-owned buildings and improvements equal to an amount determined by a ratio equal to the number of years the building and/or improvements have been in existence

over the original term of the lease, without consideration of any possibility or probability of renewal, or of options, if any. There shall be no amortization of partially constructed improvements authorized by the Lessor, if said construction is incomplete within the time period set forth in the approval granted by the Lessor. The value, to be determined by the Lessor, of such partially constructed improvements shall be paid to Lessee.

- 17.3. **Severance Damages:** The entire award of compensation paid for any severance damages, whether paid for impairment of access, for land, buildings, and/or improvements shall be the property of the Lessor, regardless of whether any buildings or improvements so damaged are owned or were constructed by the Lessor or Lessee. However, should the Lessor determine that improvements are to be restored, that portion of the severance damages necessary to pay the cost of restoration, as set forth in this Section, shall be paid to Lessee upon the written request of Lessee, accompanied by evidence that the sum requested has been paid for said restoration and is a proper item of such cost and used for such purpose.
- 17.4. **Partial Taking: Restoration:** In case of a taking of the leased premises other than a total taking and/or should Lessee elect not to terminate this lease pursuant to this Section, the Lessor and Lessee may mutually agree that Lessee shall restore any improvements on the leased premises, and Lessee shall, at Lessee's expense, whether or not the awards or payments, if any, on account of such taking are sufficient for the purpose, promptly commence and proceed with reasonable diligence to effect (subject to Force Majeure) restoration of the improvements on the remaining portion of the leased premises as nearly as possible to their condition and character immediately prior to such taking, except for any reduction in area caused thereby, or with such changes or alterations as may be made at the election of Lessee in accordance with Article II, *Lessee Improvements and Alterations* subsection of this lease.
- 17.4.1. In the event the improvements damaged and/or taken belong to the Lessor, the Lessor shall not be obligated to restore said improvements should the Lessor, in its sole discretion, determine not to do so.
- 17.5. **Taking for Temporary Use:** In the event of a taking of all or any portion of the leased premises for temporary use, this lease shall continue in full force and effect without reduction or abatement of rental or other sum payable hereunder, and Lessee shall be entitled to make claim for, recover and retain any awards or proceeds made on account thereof, whether in the form of rent or otherwise, unless such period of temporary use or occupancy extends beyond the term of this lease, in which case such awards or proceeds shall be apportioned between the Lessor and Lessee as heretofore specified. Lessee shall restore or cause to be restored any such areas temporarily taken to the condition existing before the taking.

18. DEFAULT:

- 18.1. **Default Events:** The following events shall be deemed to be events of default by Lessee under the lease:
- 18.1.1. Lessee fails to pay any rent due under this lease, which failure continues for a period of ten (10) days after such payment should have been paid pursuant to the terms and conditions of this lease;
- 18.1.2. Lessee fails to comply with any term, provision or covenant of this lease, other than paying rent, and does not cure such failure within thirty (30) days

after Lessor has sent written notice to Lessee specifying such failure or such longer period of time as may be granted by Lessor to cure such default as long as Lessee commences to cure such default within such thirty (30) day period and diligently proceeds to cure such default;

- 18.1.3. Lessee makes an assignment of this lease, or any rights granted to Lessee hereunder, to, and for the benefit of, Lessee's creditors;
 - 18.1.4. Lessee, within thirty (30) days after the commencement of any proceeding against Lessee seeking adjudication of bankruptcy or reorganization, rearrangement, composition, readjustment, liquidation, dissolution or similar relief, fails to cause such proceedings to be dismissed; and/or
 - 18.1.5. Lessee, within sixty (60) days after the appointment without Lessee's consent or acquiescence of any trustee, receiver, or liquidator of the Lessee or a material part of its assets, causes such appointment to be vacated.
 - 18.1.6. The interests of Lessee under this lease shall not, except at the Lessor's option and with its written consent, be assignable by operation of law. In case of the bankruptcy of Lessee, or the appointment of a receiver for Lessee and such receiver is not removed within one hundred-twenty (120) days from the date of appointment, or if a receiver is appointed to take possession of the leased premises as a result of any act or omission of Lessee and such receiver is not removed within one hundred-twenty (120) days from the date of appointment, or if Lessee makes an assignment of this lease for the benefit of creditors, or if possession of the leased premises is taken by virtue of any attachment, execution, or the levy of any judicial process, the Lessor, at its election, may, after written notice to Lessee, terminate this lease.
- 18.2. Lessor's Remedies: Upon the occurrence of a Default Event, the Lessor, in addition to any other rights or remedies available to the Lessor at law or in equity, shall have the right to:
- 18.2.1. Terminate this lease and all rights of Lessee under this lease, by giving Lessee thirty (30) days written notice that this lease is terminated, in which case, the Lessor may recover from Lessee the aggregate sum of:
 - 18.2.1.1. The worth at the time of award of any unpaid rent that had been earned at the time of termination;
 - 18.2.1.2. The worth at the time of award of the amount by which (A) the unpaid rent that would have been earned after termination until the time of award exceeds (B) the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;
 - 18.2.1.3. The worth at the time of award of the amount by which (A) the unpaid rent for the balance of the term after the time of award exceeds (B) the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;
 - 18.2.1.4. Any other amount necessary to compensate the Lessor for all the detriment caused by Lessee's failure to perform the Lessor's obligations or that, in the ordinary course of things, would be likely to result from Lessee's failure; and

- 18.2.1.5. All other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law.
- 18.2.1.6. As used in this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum.
- 18.2.1.7. As used in this Section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).
- 18.2.1.8. As used in this Section, the term "rent" shall include the Rent and any and all other payments required by Lessee under this lease.
- 18.2.2. Continue this lease, and from time to time, without terminating this lease, either:
 - 18.2.2.1. Recover all rent and other amounts payable as they become due; or
 - 18.2.2.2. Re-let the leased premises or any part on behalf of Lessee on terms and at the rent that the Lessor, in the Lessor's sole discretion, may deem advisable, all with the right to make alterations and repairs to the leased premises, at Lessee's sole cost, and apply the proceeds of re-letting to the rent and other amounts payable by Lessee. To the extent that the rent and other amounts payable by Lessee under this lease exceed the amount of the proceeds from re-letting, the Lessor may recover the excess from Lessee as and when due.
- 18.2.3. Upon the occurrence of a Default Event, the Lessor shall also have the right, with or without terminating this lease, to re-enter the leased premises and remove all property from the leased premises. The Lessor may store the property removed from the leased premises at the expense and for the account of Lessee.
- 18.2.4. None of the following remedial actions, alone or in combination, shall be construed as an election by the Lessor to terminate this lease unless the Lessor has in fact given Lessee written notice that this lease is terminated or unless a court of competent jurisdiction decrees termination of this lease: any act by the Lessor to maintain or preserve the leased premises; any efforts by the Lessor to re-let the leased premises; any re-entry, repossession, or re-letting of the leased premises by the Lessor pursuant to this Section. If the Lessor takes any of the previous remedial actions without terminating this lease, the Lessor may nevertheless, at any later time, terminate this lease by written notice to Lessee.
- 18.2.5. If the Lessor re-lets the leased premises, the Lessor shall apply the revenue from the re-letting as follows: first, to the payment of any indebtedness other than rent due from Lessee to the Lessor; second, to the payment of any cost of re-letting; third, to the payment of the cost of any maintenance and repairs to the leased premises; and fourth, to the payment of rent and

other amounts due and unpaid under this lease. The Lessor shall hold and apply the residue, if any, to payment of future amounts payable under this lease as the same may become due, and shall be entitled to retain the eventual balance with no liability to Lessee. If the revenue from re-letting during any month, after application pursuant to the previous provisions, is less than the sum of (a) the Lessor's expenditures for the leased premises during that month and (b) the amounts due from Lessee during that month, Lessee shall pay the deficiency to the Lessor immediately upon demand.

- 18.2.6. After the occurrence of a Default Event, the Lessor, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Default Event for the account and at the expense of Lessee. However, the Lessor must by prior written notice first allow Lessee a reasonable opportunity to cure, except in cases of emergency, where the Lessor may proceed without prior notice to Lessee. Lessee shall, upon demand, immediately reimburse the Lessor for all costs, including costs of settlements, defense, court costs, and attorney fees that the Lessor may incur in the course of any cure.
- 18.2.7. No security or guaranty for the performance of Lessee's obligations that the Lessor may now or later hold shall in any way constitute a bar or defense to any action initiated by the Lessor or unlawful detainer or for the recovery of the leased premises, for enforcement of any obligation of Lessee, or for the recovery of damages caused by a breach of this lease by Lessee or by a Default Event.
- 18.2.8. Except where this is inconsistent with or contrary to any provisions of this lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.

19. TERMINATION BY PARTIES:

- 19.1. This lease may be terminated by either party by giving to the other party not less than thirty (30) days' advance written notice of such termination; but, for reasons other than nonpayment of rent, such right of termination shall be exercised by Lessor only when Lessee is in default with respect to the terms, conditions, or covenants of this lease, or in the event the Board determines that the operations of Lessor or the public interest require such termination.
- 19.2. Lessor shall have the unconditional right to terminate this lease by giving Lessee 180 days advance written notice of such termination.
- 19.3. Upon termination of the lease for whatever reason, the Lessee shall be responsible, to the extent caused by or introduced onto the property as a result of the use of the property by Lessee, for all cleanup costs and expenses including, but not limited to,

any fines, penalties, judgments, litigation costs, and attorneys' fees incurred as a result of any and all discharge, leakage, spillage, emission of material which is, or becomes, defined as any pollutant, contaminant, hazardous waste or hazardous substance, under all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, or imposing liability or standards of conduct concerning any hazardous substance on, under, or about the property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USCS §§9601 et seq.); the Resource Conservation and Recovery Act of 1976 (42 USCS §§6901 et seq.); the Clean Water Act, also known as the Federal Water Pollution Control Act (33 USCS §§1251 et seq.); the Toxic Substances Control Act [15 USCS §§2601 et seq.); the Hazardous Materials Transportation Act [49 USCS §§1801 et seq.); the Insecticide, Fungicide, Rodenticide Act (7 USCS §§136 et seq.); the Superfund Amendments and Reauthorization Act (42 USCS §§6901 et seq.); the Clean Air Act (42 USCS §§7401 et seq.); the Safe Drinking Water Act (42 USCS §§300f et seq.); the Solid Waste Disposal Act (42 USCS §§6901 et seq.); the Surface Mining Control and Reclamation Act (30 USCS §§1201 et seq.); the Emergency Planning and Community Right to Know Act (42 USCS §§11001 et seq.); the Occupational Safety and Health Act (29 USCS §§655 and 657); the California Underground Storage of Hazardous Substances Act (H&SC §§25280 et seq.); the California Hazardous Substances Account Act (H&SC §§25300 et seq.); the California Hazardous Waste Control Act (H&SC §§25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (H&SC §§24249.5 et seq.); the Porter-Cologne Water Quality Act (Wat. C. §§13000 et seq.); together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to hazardous substances on, under, or about the property, including ambient air, soil, soil vapor, groundwater, surface water, or land use. Said cleanup shall be accomplished to the satisfaction of Lessor and any governmental body having jurisdiction there over.

20. SURRENDER OF PREMISES:

- 20.1. Upon the expiration of the term of this lease or sooner termination as herein provided, the Lessor has the right to discontinue leasing the premises and has no obligation to Lessee to renew, extend, transfer, or re-lease the premises. If this right is exercised by the Lessor, Lessee shall vacate the premises and shall peaceably surrender the same. Lessee is obliged to, and shall remove any and all Lessee-owned personal property, trade fixtures, and goods, and hazardous materials and wastes located in or upon the leased premises, except for trees and shrubs, and structures and improvements, title to which automatically passes to the Lessor pursuant to this lease. Lessee shall leave the premises in a level, graded condition.
- 20.2. The Lessor may waive the obligation to remove and restore, in writing, upon prior written request therefor by Lessee. If the obligation is waived, Lessee shall quit and surrender possession of the premises to the Lessor in at least as good and usable condition as the same are required to be maintained under this lease. In this event, the Lessor shall acquire title to any and all such personal property, trade fixtures and goods, located in or upon the leased premises and remaining there upon the expiration or any termination of this lease, and Lessee agrees that title to same shall and by this agreement does vest in the Lessor, and that Lessee shall thereafter have no rights

whatsoever in any such personal property, trade fixtures, and goods left on the premises.

20.3. Should Lessee fail to remove any Lessee-owned or sublessee-owned personal property, trade fixtures, and goods or fail to request Lessor's waiver of removal, the Lessor can elect to retain or dispose of, in any manner, any such personal property, trade fixtures, and goods that Lessee does not remove from the premises on expiration or termination of the term as allowed or required by this lease by giving thirty (30) days' written notice to Lessee. Title to any such personal property, trade fixtures, and goods shall vest in the Lessor on the expiration of the thirty (30) day notice. Lessee waives all claims against the Lessor for any damage to Lessee resulting from the Lessor's retention or disposal of any such property. Lessee shall be liable to the Lessor for the Lessor's costs for storing, removing, or disposing of any property of the Lessee or sublessees.

21. **HOLDING OVER:** If Lessee shall hold over after expiration or other termination of this lease, whether with the apparent consent or without the consent of the Lessor, such shall not constitute a renewal or extension of this lease, nor a month-to-month tenancy, but only a tenancy at will with liability for reasonable rent, and in all other respects on the same terms and conditions as are herein provided. The term reasonable rent as used in this Section shall be no less than 1/12th of the total yearly rents, taxes, and assessments provided for elsewhere in this lease, per month, and said reasonable rent during the holdover period shall be paid, in advance, on the first day of each month.
22. **QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION:** Upon termination of this lease for any reason, including, but not limited to, termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to the Lessor immediately upon written demand therefor a good and sufficient deed whereby all right, title, and interest of Lessee in the demised premises is quitclaimed to the Lessor. Should Lessee fail or refuse to deliver the required deed to the Lessor, the Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed, and said notice shall be conclusive evidence of the termination of this lease and of all right of Lessee or those claiming under Lessee in and to the demised premises.
23. **SUCCESSORS IN INTEREST:** This lease shall inure to the benefit of, and be binding upon the parties hereto and any heirs, successors, executors, administrators, and any permitted assigns, as fully and to the same extent specifically mentioned in each instance, and every term, covenant, condition, stipulation, and agreement contained in this lease shall extend to and bind any heir, successor, executor, administrator, and assign, all of whom shall be jointly and severally liable hereunder.
24. **AUDITS:** The Lessor may, at its sole discretion and with reasonable notice to Lessee, require Lessee to provide access to all records and other information necessary to perform an audit of rental, fees, and other charges paid and payable to the Lessor. The Lessor's right to access such records and information shall survive three (3) years beyond the expiration or early termination of this lease. Lessee shall retain all records and other information necessary to perform an audit as described above for a minimum of seven (7) years.
25. **RECORDING:** Neither this lease nor a memorandum thereof shall be recorded without the Lessor's consent in writing.

26. **WAIVER:** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. The subsequent acceptance of rent hereunder by the Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease other than the failure of Lessee to pay the particular rent so accepted, regardless of the Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

27. ESTOPPEL CERTIFICATES:

27.1. Estoppel Certificate From Lessee: Within fifteen (15) days following any written request that the Lessor may make from time to time pursuant to the request of a lender or prospective purchaser, Lessee shall execute and deliver to the Lessor a statement certifying: (a) the Lease Commencement Date; (b) the fact that this lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this lease is in full force and effect as modified, and stating the date and nature of the such modifications); (c) the date to which the rental and other sums payable under the lease have been paid; and (d) the fact that there are no current defaults under the lease by either party except as specified in Lessee's statement. The parties intend that any statement delivered pursuant to this Section may be relied on by any mortgagee, beneficiary, purchaser or prospective purchaser of the demised premises or any interest therein.

27.2. Lessee's Failure to Provide Statement: Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee that (a) this lease is in full force and effect, without modification except as may be represented by the Lessor; and that (b) there are no uncured defaults in the Lessor's performance.

27.3. Estoppel Certificate From the City: Within fifteen (15) business days following any written request that Lessee may make from time to time pursuant to the request of a prospective assignee or sublessee, the Lessor shall execute and deliver to Lessee a statement certifying: (a) the Commencement Date of the lease; (b) the fact that this lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rental and other sums payable under this lease have been paid; and (d) the fact that there are no current defaults under this lease by Lessee, except as specified in the Lessor's statement. The parties intend that any statement delivered pursuant to this Section may be relied upon by the proposed assignee or sublessee for whom it was requested. The Lessor's failure to deliver such statement within such time shall be conclusive upon the Lessor that (1) this lease is in full force and effect without modification, except as represented by Lessee; and that (2) there are no uncured defaults of Lessee under the lease; provided, however, that such conclusive effect is applicable only to the failure of the Lessor to respond after an additional five (5) working days' notice to the Lessor and only with respect to the proposed assignee or sublessee for whom it was requested.

28. MISCELLANEOUS PROVISIONS:

28.1. Fair Meaning: The language of this lease shall be construed according to its fair meaning, and not strictly for or against either the Lessor or Lessee.

- 28.2. Section Headings: The section headings appearing herein are for the convenience of the Lessor and Lessee, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this lease.
- 28.3. Void Provisions: If any provision of this lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this lease, and all such other provisions shall remain in full force and effect.
- 28.4. Two Constructions: It is the intention of the parties hereto that if any provision of this lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
- 28.5. Laws of California: This lease shall be construed and enforced in accordance with the laws of the State of California.
- 28.6. Lessor's Consent: In each instance herein where the Board's or Lessor's approval or consent is required before Lessee may act, such approval or consent shall not be unreasonably withheld, unless otherwise provided.
- 28.7. Gender: The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- 28.8. Time: Time shall be of the essence in complying with the terms, conditions, and provisions of this lease.
- 28.9. Integration Clause: It is understood that no alteration or variation of the terms of this lease shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement, not incorporated herein in writing, shall be binding on any of the parties hereto.
- 28.10. Force Majeure: Except as otherwise provided in this lease, whenever a day is established in this lease on which, or a period of time, including a reasonable period of time, is designated within which, either party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lockouts, embargoes, unavailability of services, labor or materials, disruption of service or brownouts from utilities not due to action or inaction of Lessor, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control--financial inability excepted--("Force Majeure"); provided, however, that nothing contained in this Subsection shall excuse Lessee from the prompt payment of any rental or other monetary charge required of Lessee hereunder.
- 28.11. Approvals: Any approvals required by the Lessor under this lease shall be approvals of the Lessor acting as Lessor and shall not relate to, constitute a waiver or, supersede or otherwise limit or affect the governmental approvals or rights of the Lessor as a governmental agency, including the approval of any permits required for construction or maintenance of the leased premises and the passage of any laws including those relating to zoning, land use, building and safety.
- 28.12. Conflicts in this Lease: If there are any direct conflicts between the provisions of Article I and Article II of the lease, the provisions of Article 1 shall be controlling.

- 28.13. Ordinance and Los Angeles Administrative Code (hereinafter referred to as "Code") Language Governs: Ordinance and Code Exhibits are provided as a convenience to the parties only. In the event of a discrepancy between the Exhibits and the applicable ordinance and/or code language, or amendments thereto, the language of the ordinance and/or code shall govern.
- 28.14. Amendments to Ordinances and Codes: The obligation to comply with any Ordinances and Codes, which have been incorporated into this lease by reference, shall extend to any amendments, which may be made to those Ordinances and Codes during the term of this lease.
- 28.15. Days: Unless otherwise specified, "days" shall mean calendar days.
- 28.16. Deprivation of Lessee's Rights: The Lessor shall not be liable to Lessee for any diminution or deprivation of Lessee's rights under this lease that may result from Lessee's obligation to comply with any and all applicable laws, rules, regulations, restrictions, ordinances, statutes, and/or orders of any federal, state and/or local government authority and/or court hereunder on account of the exercise of any such authority as is provided in this Section, nor shall Lessee be entitled to terminate the whole or any portion of the lease by reason thereof.
29. **OTHER AGREEMENTS NOT AFFECTED:** Except as specifically stated herein, this lease, and the terms, conditions, provisions and covenants hereof, shall apply only to the leased premises herein particularly described, and shall not in any way change, amend, modify, alter, enlarge, impair, or prejudice any of the rights, privileges, duties, or obligations of either of the parties hereto, under or by reason of any other agreement between said parties, except that nothing contained in such other agreement shall limit the use by Lessee of the within leased premises for the herein referred to purpose.
30. **SUPERSEDURE:** This lease, upon becoming effective, shall supersede and annul any and all permits, leases, or rent agreements heretofore made or issued for the leased premises between Lessor and Lessee; and any such permits, leases, or rental agreements shall hereafter be void and of no effect except as to any rentals, royalties, or fees that may have accrued thereunder.
31. **ENTIRE UNDERSTANDING:** This lease contains the entire understanding of the parties, and Lessee, by accepting the same, acknowledges that it supersedes and annuls any writings or oral discussions, statements, understandings, or representations that may have been made concerning the subject matter hereof; and that there is no other written or oral understanding between the parties in respect to the leased premises or the rights and obligations of the parties hereto. No modification, amendment, or alteration of this lease shall be valid unless it is in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have themselves, or through their duly authorized officers, caused this lease to be executed as of the day and year herein below written.

The signature affixed hereto of the Lessee, or the authorized representative of the Lessee, certifies that Lessee has read and does understand each and every section and paragraph contained in this lease and agrees to abide by and be bound by same.

County of Inyo
Public Works Department

Date _____ By _____

P.O. Drawer Q
Independence, CA 93526

LESSEE

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES

Date _____ By _____

RONALD O. NICHOLS
General Manager

LESSOR

APPROVED:

Martin L. Adams
Director of Water Operations

Date

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. FEUER, CITY ATTORNEY

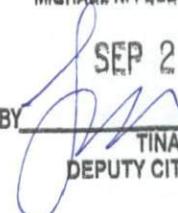
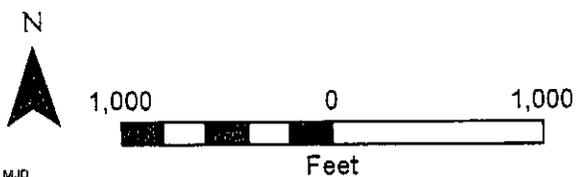
SEP 27 2013
BY  _____
TINA SHIM
DEPUTY CITY ATTORNEY

EXHIBIT A
(BL-1468)
(lease map)



Subject Premises
21.19Ac.
BL 1468

12-100-01K

EXHIBIT B

**CONTRACT INSURANCE REQUIREMENTS -- DEPARTMENT OF WATER AND POWER
For Contractors, Service Providers, Vendors, and Tenants**

Agreement/Activity/Operation:	A site for a borrow pit for Inyo County use only
Reference/Agreement:	BL-1468 County of Inyo Public Works Department
Term of Agreement:	five years – October 1, 2012 through September 30, 2017
Contract Administrator and Phone:	Karen E. Philbrook / Bishop / Ext. 30234
Buyer and Phone Number:	

Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated. Firm 30 day Notice of Cancellation required by Receipted Delivery.

PER OCCURRENCE LIMITS

- () **WORKERS' COMPENSATION** (Stat. Limits)/Employer's Liability: (\$1,000,000)
 - () Broad Form All States Endorsement
 - () Jones Act (Maritime Employment)
 - () Waiver of Subrogation
 - () Other: _____
 - () US L&H (Longshore and Harbor Workers)
 - () Outer Continental Shelf
 - () Black Lung (Coal Mine Health and Safety)
 - () Other: _____

- () **AUTOMOBILE LIABILITY:** (\$1,000,000)
 - () Owned Autos
 - () Hired Autos
 - () Contractual Liability
 - () MCS-90 (US DOT)
 - () Waiver of Subrogation
 - () Any Auto
 - () Non-Owned Auto
 - () Additional Insured
 - () Trucker's Form
 - () Other: _____

- () **GENERAL LIABILITY:** (\$1,000,000)
 - () Limit Specific to Project
 - () Per Project Aggregate
 - () Broad Form Property Damage
 - () Premises and Operations
 - () Fire Legal Liability
 - () Corporal Punishment
 - () Watercraft Liability
 - () Waiver of Subrogation
 - () Marine Contractors Liability
 - () Contractual Liability
 - () Products/Completed Ops.
 - () Garagekeepers Legal Liab.
 - () Collapse/Underground
 - () Pollution
 - () Airport Premises
 - () Other: Agg 2x per occurrence
 - () Personal Injury
 - () Independent Contractors
 - () Child Abuse/Molestation
 - () Explosion Hazard
 - () Addition Insured Status
 - () Hangarkeepers Legal Liab.
 - () Other: _____

- () **PROFESSIONAL LIABILITY:**
 - () Contractual Liability
 - () Additional Insured
 - () Waiver of Subrogation
 - () Vicarious Liability Endt.
 - () 3 Year Discovery Tail
 - () Other: _____

- () **AIRCRAFT LIABILITY:**
 - () Passenger Per Seat Liability
 - () Pollution
 - () Contractual Liability
 - () Additional Insured
 - () Hull Waiver of Subrogation
 - () Other: _____

- () **PROPERTY DAMAGE:** () Loss Payable Status (AOIMA)
 - () Replacement Value
 - () All Risk Form
 - () Builder's Risk: \$ _____
 - () Transportation Floater: \$ _____
 - () Scheduled Locations/Propt.
 - () Actual Cash Value
 - () Named Perils Form
 - () Boiler and Machinery
 - () Contractors Equipment: \$ _____
 - () Other: _____
 - () Agreed Amount
 - () Earthquake: _____
 - () Flood: _____
 - () Loss of Rental Income: _____
 - () Other: _____

- () **WATERCRAFT:**
 - () Protection and Indemnity
 - () Waiver of Subrogation
 - () Pollution
 - () Other: _____
 - () Additional Insured
 - () Other: _____

- () **POLLUTION:**
 - () Incipient/Long-Term
 - () Waiver of Subrogation
 - () Sudden and Accidental
 - () Contractor's Pollution
 - () Additional Insured
 - () Other: _____

- () **CRIME:** () Joint Loss Payable Status
 - () Fidelity Bond
 - () Employee Dishonesty
 - () Computer Fraud
 - () Other: _____
 - () Financial Institution Bond
 - () In Transit Coverage
 - () Commercial Crime
 - () Other: _____
 - () Additional Insured
 - () Loss of Monies/Securities
 - () Wire Transfer Fraud
 - () Forgery/Alteration of Docs.

- () **ASBESTOS LIABILITY:** () Additional Insured



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

14

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF November 26, 2013

SUBJECT: Continuation of declaration of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Canyon Crusher Emergency, that resulted in flooding in the portions of Inyo County during the month of August, 2013.

SUMMARY DISCUSSION: - During your September 17, 2013 Board of Supervisors meeting your Board took action to declare a local emergency, which has been named The Canyon Crusher Emergency, which was a result of flooding in the portions of Inyo County during the month of August. Since the circumstances and conditions relating to this emergency persist, your Board directed that the continuation of the declaration be considered on a by-weekly basis. The recommendation is that the emergency be continued until the further evaluation of the damage is completed and staff makes the recommendation to end the emergency.

ALTERNATIVES: N/A

OTHER AGENCY INVOLVEMENT: N/A

FINANCING: N/A

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i> Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i> Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

(The Original plus 20 copies of this document are required)

Date: _____



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

15

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF November 26, 2013

SUBJECT: Continuation of declaration of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Gully Washer Emergency, that resulted in flooding in the central, south and southeastern portion of Inyo County during the month of July, 2013.

SUMMARY DISCUSSION: - During your August 6, 2013 Board of Supervisors meeting your Board took action to declare a local emergency, which has been named The Gully Washer Emergency, which was a result of flooding in the central, southern and southeastern portion of Inyo County during the month of July. Since the circumstances and conditions relating to this emergency persist, your Board directed that the continuation of the declaration be considered on a by-weekly basis. The recommendation is that the emergency be continued until the further evaluation of the damage is completed and staff makes the recommendation to end the emergency.

ALTERNATIVES: N/A

OTHER AGENCY INVOLVEMENT: N/A

FINANCING: N/A

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

(The Original plus 20 copies of this document are required)

Date: _____



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

16

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF November 26, 2013

SUBJECT: Continuation of declaration of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Death Valley Roadeater Emergency, that resulted in flooding in the eastern portion of Inyo County during the month of August 2012, per Resolution #2012-32.

SUMMARY DISCUSSION: - During your August 28, 2012 Board of Supervisors meeting your Board took action to declare a local emergency, which has been named The Death Valley Roadeater Emergency, which was a result of flooding in the southeastern portion of Inyo County during the month of August. Since the circumstances and conditions relating to this emergency persist, your Board directed that the continuation of the declaration be considered on a by-weekly basis. The recommendation is that the emergency be continued until the further evaluation of the damage is completed and staff makes the recommendation to end the emergency.

ALTERNATIVES: N/A

OTHER AGENCY INVOLVEMENT: N/A

FINANCING: N/A

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

(The Original plus 20 copies of this document are required)

Date: _____