

# 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.

### August 2, 2016

8:30 a.m. 1. **PUBLIC COMMENT**

#### CLOSED SESSION

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION.** (Paragraph (1) of subdivision (d) of Government Code Section 54956.9). *Native American Heritage Commission v. Inyo County Planning Department and Inyo County Board of Supervisors*, Inyo County Superior Court Case No. SICVPT 1557557 (Munro Petition for Writ of Mandate)
3. **CONFERENCE WITH LABOR NEGOTIATORS [Pursuant to Government Code §54957.6]** – Employee Organizations: Deputy Sheriff's Association (DSA); Elected Officials Assistant Association (EOAA); Inyo County Correctional Officers Association (ICCOA); Inyo County Employees Association (ICEA); Inyo County Probation Peace Officers Association (ICPPOA); Law Enforcement Administrators' Association (LEAA). Unrepresented employees: all. Agency designated representatives: County Administrative Officer, Kevin Carunchio, Assistant County Administrator, Rick Benson, Deputy Personnel Director, Sue Dishion, Information Services Director, Brandon Shults, County Counsel, Marshall Rudolph, and Assistant County Counsel, John Vallejo.

#### OPEN SESSION

10:00 a.m. **PLEDGE OF ALLEGIANCE**

4. **REPORT ON CLOSED SESSION**
5. **PUBLIC COMMENT**
6. **COUNTY DEPARTMENT REPORTS** (Reports limited to two minutes)

**CONSENT AGENDA** (Approval recommended by the County Administrator)

#### COUNTY ADMINISTRATOR

7. **Information Services** – Request Board authorize the issuance of a blanket purchase order in the total amount of \$54,000 to Pitney Bowes from the Information Services Budget 011801, Object Code 5236 (Information Services Postage) contingent on Board approval of the Fiscal Year 2016-2017 budget.

8. **Motor Pool** – Request Board: A) Declare the vehicles identified in Exhibit A as surplus; B) Authorize Motor Pool to offer the vehicles for sale utilizing the Public Surplus auction site; and C) authorize Motor Pool to utilize either the previously approved consignment agreement with Enterprise Fleet Management or another auctioneer for the removal and sale of any vehicle remaining unsold after the Public Surplus process.
9. **Museum** – Request Board approve and authorize the Chairman to sign a grant agreement with the Carson & Colorado Railway allowing the County to reimburse the Carson & Colorado for a portion of the cost, not to exceed \$50,000, to construct a building to house Engine No. 18 on the grounds of the Eastern California Museum, contingent upon obtaining all necessary signatures.
10. **Information Services** – Request Board ratify the renewal of a Software Maintenance Agreement between Crest Software Corporation and the County of Inyo for the County's enterprise Property Tax Management System for the period of July 1, 2016 through June 30, 2017 in an amount not to exceed \$34,040, contingent on Board approval of the Fiscal Year 2016-2017 budget.

#### HEALTH AND HUMAN SERVICES

11. **Eastern Sierra Area Agency on Aging and IC Gold** – Request Board: A) Declare Oliver Products Company a sole-source vendor; and B) Approve a blanket purchase order for Oliver Products Company in the amount of \$25,000 for the purchase of food trays and coverings for the home-delivered meals program for Fiscal Year 2016-2017, contingent on Board approval of the Fiscal Year 2016-2017 budget.
12. **Jail Medical** – Request Board approve up to an additional six months, not to exceed January 31, 2017, the temporary employee status of two nurses that provide on-call response to inmate health care issues for the Jail and Juvenile Center.
13. **Social Services** – Request Board authorize the issuance of a blanket purchase order for Pitney Bowes in the amount of \$13,000 for postage in the Social Services Programs for Fiscal Year 2016-2017.
14. **Social Services** – Request Board approve payment of County Welfare Directors Association of California dues for Fiscal Year 2016-2017 in an amount not to exceed \$16,975, contingent on Board approval of the Fiscal Year 2016-2017 budget.

#### PUBLIC WORKS

15. Request adopt Resolution No. 2016-30, titled, "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Authorizing the Recording of a Notice of Completion for the Animal Shelter Fencing Project," accepting the construction and authorize the recording of a Notice of Completion for the Animal Shelter Fencing Project.

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

16. **PUBLIC WORKS** – Request Board approve to ratify contract with Shoshone Propane of Pahrump, Nevada \$2,700 for a not-to-exceed amount of \$22,700 per the approved Contract Change Order for additional electrical services.
17. **PLANNING** – Request Board receive a presentation from staff on the EB-5 Immigrant Investor Program, review draft correspondence, and authorize the Chairperson to sign.
18. **COUNTY ADMINISTRATOR – Integrated Waste Management** – Request Board find that, consistent with the adopted Authorized Position Review Policy: A) The availability of funding for the requested position exists in the Fiscal Year 2016-2017 Solid Waste budget as certified by the Department Head and concurred with by the County Administrator and Auditor-Controller; B) Where internal candidates meet the qualifications of the position, the vacancy could possibly be filled through an internal recruitment, however it would be more appropriate to fill the position through an open recruitments; and C) Hire one Equipment Operator I, at Range 58 (\$3,310 - \$4,027), or Equipment Operator II at Range 60 (\$3,471 - \$4,261), depending on the qualifications of the selected candidate as determined by the County Administrator.

19. **HEALTH AND HUMAN SERVICES** – Request Board ratify and approve the Standard Agreement between the County of Inyo and California Department of Public Health, AIDS Drug Assistance Program, Office of AIDS, Agreement #16-10337, to continue Inyo County HHS/Public Health as an enrollment site, for the period of July 1, 2016 through June 30, 2019; and authorize the Director of Health and Human Services to sign the Standard Agreement, the Security Requirement Protections and Confidentiality Checklist (Exhibit F), the Contractor Certification CCC-307 form, and the Darfur Contracting Act form, and transmit a copy of the signed documents to the Clerk of the Board for the Board's files.
20. **HEALTH AND HUMAN SERVICES – Public Health** – Request Board ratify and approve the Standard Agreement #15-11056 between the County of Inyo and Department of Public Health for the provision of HIV/AIDS care and support services to individuals living with HIV/AIDS or who are at risk of HIV infection, at a total grant amount of \$243,443 from the period of April 1, 2016 through March 31, 2019, contingent upon Board approval of future budgets; and authorize the Chairperson to sign the Standard Agreement, Certification Regarding Lobbying, Contractor Certification, and the Darfur Contracting Act Certification.
21. **HEALTH AND HUMAN SERVICES** – Request Board conduct a workshop with staff from Health and Human Services to provide an update on the implementation of California's Continuum of Care Reform efforts, including the potential beneficial local impacts on placement options for children and youth placed through Juvenile Probation and Child Welfare.
22. **CLERK OF THE BOARD** – Request approval of the minutes of the Board of Supervisors regular meeting of June 28, 2016.

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

- 1 p.m. 23. **PLANNING** – Request Board, regarding options for regulating or prohibiting medical marijuana cultivation and/or dispensary, collective, or cooperative operation in unincorporated Inyo County, consider zoning regulations and other regulations, and provide direction.

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

24. **PUBLIC COMMENT**

**BOARD MEMBERS AND STAFF REPORTS**

**CORRESPONDENCE - INFORMATIONAL**

25. **CALIFORNIA FISH AND GAME COMMISSION** – Notice of proposed regulatory action to establish the application and drawing procedures for wild upland game bird hunt reservations in the Automated License Data System and the addition of a fee of \$5 per application.
26. **NUCLEAR WASTE TECHNICAL REVIEW BOARD** – Report on focus of August 24, 2016 Nuclear Technical Review Board meeting in Washington, D.C.
27. **WESTERN COUNTIES ALLIANCE** – Update on current issues from Executive Director Ken Brown.



**AGENDA REQUEST FORM  
BOARD OF SUPERVISORS  
COUNTY OF INYO**

<p><i>For Clerk's Use Only:</i> <b>AGENDA NUMBER</b></p> <p align="center">7</p>
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- Consent   
  Departmental   
  Correspondence Action   
  Public Hearing  
 Scheduled Time for   
  Closed Session   
  Informational

**FROM:** County Administrator – Information Services

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Authorization to issue blanket purchase order for postage

**DEPARTMENTAL RECOMMENDATION:**

Request your Board A) Authorize the issuance of a blanket purchase order in the total amount of \$54,000 to Pitney Bowes Purchase Power from the Information Services Budget 011801, Object Code 5236 (Information Services Postage) contingent on Board approval of FY 2016-17 budget.

**SUMMARY DISCUSSION:**

Information Services processes mail daily for various County departments. The cost of postage related to this activity is requested in the Information Services budget annually. Information Services uses Pitney Bowes postages machines, selected though a competitive bid process and approved by your Board in December, 2013, to apply postage to mail. The Pitney Bowes machines are metered and will only allow postage to be applied up to the amount on account with Pitney Bowes. Approximately every two months, Inyo County's postage account with Pitney Bowes is refreshed. The Auditor's Office has requested that annually a blanket purchase order for the amount of estimated postage be created and that the cost of each postage refresh be applied towards the blanket purchase order.

**ALTERNATIVES:**

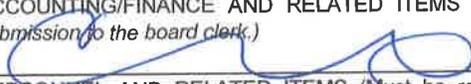
Your Board could choose not to approve this request in which case each postage refresh purchase would need approval through the County purchasing policy process.

**OTHER AGENCY INVOLVEMENT:**

Most County departments rely on the postage service provided by Information Services.

**FINANCING:**

Funding for postage costs are requested in the FY 2016-17 Information Services 011801 budget, Object Code 5236 (Information Services Postage).

<b>APPROVALS</b>	
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: <u>cyg</u> Date <u>7/14/2016</u>
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:**  Date: 7/14/2016  
 (Not to be signed until all approvals are received)



**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only: <b>AGENDA NUMBER</b>  8
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- Consent     Departmental     Correspondence Action     Public Hearing  
 Scheduled Time for     Closed Session     Informational

**FROM:** Motor Pool

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Request to Dispose of Surplus Motor Pool Vehicles

**DEPARTMENTAL RECOMMENDATION:**

Request that your Board, A) declare the vehicles identified in Exhibit A as surplus, B) authorize Motor Pool to offer the vehicles for sale utilizing the Public Surplus auction site and C) authorize Motor Pool to utilize either the previously approved consignment auction agreement with Enterprise Fleet Management or another auctioneer for the removal and sale of any vehicles remaining unsold after the Public Surplus process.

**SUMMARY DISCUSSION:**

In 2015 your Board approved a comprehensive vehicle acquisition process utilizing Enterprise Fleet Management. Most County Motor Pool vehicles are now being leased through Enterprise. At the end of their useful life, the vehicles will be auctioned by Enterprise and the proceeds credited to the County. Fully transitioning to the Enterprise model will take several years.

This year, motor pool started using the Public Surplus online auction site as a means to dispose of County vehicles. The first two trials at the site have proved to be very successful; therefore, it is the department's intent to continue to use the site.

Included here, as Attachment A, is a list of vehicles either recently or soon to be taken out of service by the County. The list includes 18 Motor Pool vehicles and three ATVs used by the Ag Department. It is requested that your Board declare these vehicles as surplus and authorize Motor Pool to offer these items for sale through publics surplus.com. Any remaining vehicles will then be sold through a traditional auction agreement or through Enterprise Fleet Management.

**ALTERNATIVES:**

Your Board may select to revert to the sealed bid process. This alternative is not recommended as it is very time-consuming and does not maximize cost recovery.

The vehicles could be placed directly into a vehicle auction either through Enterprise or another auction house. This would limit the ability of local residents to bid on the vehicles but is much less staff intensive and generally produces significant cost recovery.

**OTHER AGENCY INVOLVEMENT:**

Auditor

**FINANCING:**

The proceeds received as a result of the auction sale will dictate the amount received by the County. The funds received will be allocated to the Motor Pool Internal Service Fund.

**APPROVALS**

COUNTY COUNSEL: N/A	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>N/A</u> 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>7/26/2016</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: <u>N/A</u> Date _____

**DEPARTMENT HEAD SIGNATURE:**

(Not to be signed until all approvals are received)  
(The Original plus 20 copies of this document are required)



Date:

7/26/16

**ATTACHMENT A**  
**SURPLUS VEHICLE LIST**

	<u>VEH #</u>	<u>DESCRIPTION</u>	<u>VIN</u>
Motor Pool			
1	7492	1998 JEEP CHEROKEE	1J4FJ28S5WL234757
2	7499	1998 GMC SIERRA	1GTEK14M6WZ541383
3	8045	2000 CHEVROLET MALIBU	1G1ND52J7Y6344035
4	8126	2001 CHEVROLET S10	1GCCS19W61K161009
5	8148	2001 CHEVROLET MALIBU	1G1ND52JX16263052
6	8259	2002 CHEVROLET ASTRO	1GNEL19X62B132780
7	8317	2003 FORD ESCAPE	1FMYU92173KE21199
8	8345	2004 CHEVROLET MALIBU	1G1ZS528X4F156558
9	8440	2006 FORD ESCAPE	1FMYU93146KD53656
10	8441	2006 FORD ESCAPE	1FMYU93126KD53655
11	8460	2007 FORD CROWN VIC	2FAFP71W57X105801
12	8463	2007 FORD CROWN VIC	2FAFP71W07X105804
13	8481	2008 FORD ESCAPE	1FMCU93198KA62731
14	8497	2008 FORD CROWN VIC	2FAFP71V28X107529
15	8545	2008 FORD CROWN VIC	2FAFP71V08X168104
16	8832	2010 FORD F250	1FDNF2A51AEB38379
17	8868	2011 FORD CROWN VIC	2FABP7BV8BX112206
18	9273	2011 FORD CROWN VIC	2FABP7BV8BX180411



**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: Eastern California Museum**

**FOR THE BOARD MEETING OF: August 2, 2016**

**SUBJECT: Grant Agreement with Carson and Colorado Railway (C&CR) to fund a building for Engine #18**

**DEPARTMENTAL RECOMMENDATION:**

Request your Board approve and authorize the Chairman to sign a grant agreement with the Carson and Colorado Railway allowing the County to reimburse Carson & Colorado for a portion of the cost, not to exceed \$50,000, to construct a building to house Engine #18 on the grounds of the Eastern California Museum, contingent upon obtaining all necessary signatures.

**SUMMARY DISCUSSION:**

On September 14, 2010 your Board entered into an agreement with the Carson and Colorado Railway (C&CR) allowing the organization to use volunteer services to restore Southern Pacific Railway narrow gauge Engine #18 at Dehy Park. For the past six years there have been considerable efforts by the organization and a great deal of progress has been made toward full restoration. As the engine is the property of the County, it has always been contemplated that the engine would eventually be housed at the Eastern California Museum.

Since none of the current structures on the Museum grounds are adequate to house the engine C&CR proposed to construct a building which will allow the organization to continue to work on the engine while also providing the public with the opportunity to view this historic artifact. In the proposal, funding for the building was to come from the Carson & Colorado Railway, the Friends of the Museum and the County. At your Board meeting on February 16, 2016, as part of the midyear budget process, your Board authorized a grant in the amount of \$50,000 as the County's contribution to this project.

C&CR is ready to proceed with construction. The attached grant agreement authorizes the release of funds to reimburse C&CR for costs to construct the building, up to \$50,000. Once the building is completed, it will be donated to the museum and Engine #18 will be moved to the facility.

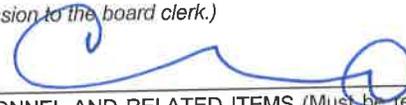
**ALTERNATIVES:**

The County owns Engine #18 and could choose not to partially fund the building; however, no other alternative offers the County the opportunity to have the engine restored while also providing for a place to display the engine.

**FINANCING:**

There is no General Fund cost. During mid-year budget review, your Board approved an appropriation and funds were transferred from the Museum Trust into a newly established budget unit (610190 – 5539) specifically for this purpose.

**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>7/25/16</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>7/26/2016</u>
PERSONNEL DIRECTOR: <u>N/A</u>	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: 7/26/16

**AGREEMENT BETWEEN COUNTY OF INYO  
AND CARSON & COLORADO RAILWAY, INC.  
FOR PROVISION OF GRANT-IN-SUPPORT**

**INTRODUCTION**

This Agreement is entered into this 2nd day of August, 2016, by and between the County of Inyo, hereinafter referred to as "County", and Carson & Colorado Railway, Inc. hereinafter referred to as "Applicant".

WHEREAS, Applicant has requested County funding to assist in the construction of a building on the grounds of the Museum, located at 155 North Grant Street, Independence, California to house and display Carson Colorado Engine #18;

WHEREAS, County desires to sponsor and assist in the construction of a building to house and display the railroad engine on the grounds of the aforementioned Museum as it will enhance in-county and/or out-of-county visitation to the community, or otherwise provide for the cultural or recreational enrichment of the citizens of Inyo County;

WHEREAS, the cost of said building project is estimated to be approximately \$150,000; and

WHEREAS, construction of said building project will be provided as is described in Attachment A, thereby serving a public purpose;

NOW, THEREFORE, County and Applicant, in consideration of the mutual benefits, promises, covenants, terms, and conditions hereinafter contained, do agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF SERVICES/SUPPORT.**

The Applicant will furnish and provide for the construction of the building (herein after referred to as "Project") which is described in Attachment A, attached hereto and by reference incorporated herein.

The Applicant will furnish and provide for the construction of the building project as set forth in Attachment A, and in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement, including any Attachments thereto.

Applicant agrees to diligently and promptly pursue the completion of the Project, and to complete the Project within the fiscal year ending June 30, 2017.

Grant funds shall only be used as described, and to carry out the construction identified, in Attachment A as approved by the Inyo County Board of Supervisors.

**2. LIMITATIONS ON USE OF FUNDS.**

Prohibition against Lobbying and Campaigning. None of the funds provided by the County to Applicant under this Agreement may be used, directly or indirectly, by Applicant, any of its agents, officers,

or employees to lobby any Federal officer or employee, member of Congress, State officer or employee, member of the State Legislature, any officer, employee or member of any governing or advisory body of any county, city, or special district within the State of California or any other state on any issue whatsoever. Further, none of the funds provided by the County to Applicant under this Agreement may be used, directly or indirectly, by Applicant, any of its agents, officers or employees to campaign for or against any candidate for any federal, state, or local office, or to campaign for or against any measure appearing on any state or local ballot.

### 3. TERM.

The term of this Agreement shall be from August 2, 2016 to February 28, 2017, unless sooner terminated as provided below.

### 4. CONSIDERATION.

A. Compensation. County agrees to pay, as set forth below, a sum not to exceed \$50,000, to Applicant for the purpose of funding the aforesaid Project as a community program, service, event, or activity available to the public or which will be a public benefit.

B. No Additional Consideration. Except as expressly provided in this Agreement, Applicant shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Applicant shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

C. Limit Upon Amount Payable Under Agreement. The total sum of all payments made by the County to Applicant under this Agreement shall not exceed \$ 50,000 (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Applicant which is in excess of the contract limit.

D. Billing and Payment. Payments to Applicant of the sum provided for in this Agreement shall be made in accordance with the following procedure and subject to the following conditions:

(1) After the Board of Supervisors has formally adopted the County's final budget for the fiscal year in which funding for this Agreement has been appropriated, the Applicant shall submit to the County an itemized claim for the obligations and expenditures incurred by Applicant which were authorized by the Scope of Work and Budget set forth in Attachment A. No claim shall be submitted or paid under this Agreement until after the Board of Supervisors adopts the County's final budget. No claim shall be submitted or paid under this Agreement until after the Applicant actually incurs the obligations or expenditures claimed.

(2) As allowed in subparagraph (1) above, claims may be submitted any time after an obligation has been incurred or encumbered; however, the final claim for expense reimbursement must be made no later than fifteen days after the end of the Agreement term. Claims will identify the date on which the obligation, encumbrance, or expenditure was incurred and describe the nature of each encumbrance, obligation or expenditure in sufficient detail so as to establish such encumbrance, obligation, or expenditure was authorized in the Scope of Work and Budget set forth as Attachment A. Applicant must submit evidence (proof) of an expenditure, encumbrance, or obligation when the claim for reimbursement is made. Additionally, it may become necessary for the Auditor/Controller to review the original vouchers or invoices for which the claims are made. The Applicant will submit original invoices upon request by the Auditor/Controller. Upon request by the Auditor/Controller, the

County of Inyo Standard Contract - Carson & Colorado Railway, Inc.

(Independent Contractor -- Grant-In-Support)

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Modified Contract No. 127  
07252016

original invoices must substantiate each item for which claim is made and shall show the budget category to which each expenditure, encumbrance, or obligation is chargeable. Forward itemized claims, along with copies of invoices, to the County Administrative Officer, Attn: Rick Benson, P.O. Box N, Independence, CA 93526.

(3) Upon receipt of a claim prepared and filed as provided above, the County Administrative Officer shall review said claim. If the claim is properly prepared and substantiated, is for authorized obligations and expenditures incurred by Applicant under the terms of this Agreement, and is otherwise proper and in order for payment, the County Administrative Officer shall, subject to the requirement of subsection 4 below, approve said claim. Upon proof of expenses and approval of a claim by the County Administrative Officer, the Auditor/Controller shall issue a check made payable to Applicant, for the reimbursement of actual costs incurred up to Fifty Thousand Dollars (\$50,000.00). Checks will be mailed to the address of the Applicant set forth in paragraph 24.

(4) Approval of claims by the County Administrative Officer will be contingent upon certification that the Applicant is in full compliance with all the provisions of this Agreement, and all previous Agreements between the County and Applicant under the Grant-In-Support Program, with regard to the requirements for the Applicant to provide the County with reports and other documentation.

(5) No claim shall be filed or approved which is not prepared and substantiated as provided in this Agreement. Applicant agrees that no obligation shall be incurred by Applicant and no claim shall be prepared or approved which is for obligations and expenditures not actually incurred by the Applicant or which are not authorized under the terms of this Agreement, including but not limited to, the purchase of fixed assets.

(6) The Auditor/Controller shall make reasonable efforts to pay such claims as are approved as certified provided above, within thirty (30) days after receipt of said claims.

(7) Applicant shall indemnify and hold County harmless from any liability or damage resulting from any failure to make, withholding, or delay in making payments.

(8) Applicant agrees to abide by all laws, regulations and requirements applicable to the expenditure of County Grant Funds, including, but not limited to, the audit of the expenditure of these funds for compliance with such laws, regulations, and requirements, with all labor laws and regulations pertinent to public funds, and further, to assure compliance with the anti-discrimination provisions of the law, including County Ordinances.

#### E. Federal and State Taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Applicant under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to a non-California resident Applicant when it is anticipated that total annual payments to Applicant under this Agreement will exceed one thousand four hundred ninety-nine dollars (\$1,499.00).

(3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Applicant under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Applicant. County has no responsibility or liability for payment of Applicant's taxes or assessments.

(4) The total amounts paid by County to Applicant, and taxes withheld from payments to a non-California resident if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Applicant shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

## 5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

A. Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for Applicant to conduct the Project described in this Agreement must be procured by Applicant and be valid at the time Applicant enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Applicant must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's license, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Applicant at no expense to the County. Applicant will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to conduct the Project identified in Attachment A. Where there is a dispute between Applicant and County as to what licenses, certificates, and permits are required to conduct the Project identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Applicant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Applicant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.sam.gov>.

## 6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Applicant shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Applicant to conduct the Project identified in Attachment A to this Agreement. Unless expressly provided for the Scope of Work and Budget (Attachment A), County is not obligated to reimburse or pay Applicant for any expense or cost incurred by Applicant in procuring or maintaining such items. Unless expressly provided in the Scope of Work and Budget (Attachment A), responsibility for the costs and expenses incurred by Applicant in providing and maintaining such items is the sole responsibility and obligation of Applicant. Any supplies, equipment, vehicles, materials, etc., paid for by County under this Agreement are the personal property of County.

## 7. COUNTY PROPERTY.

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Applicant by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Applicant will use reasonable care to protect, safeguard and maintain such items while they are in Applicant's possession. Applicant will be financially responsible for any loss or damage to such items, partial or total, which is the result of Applicant's negligence.

B. Products of Applicant's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Applicant's services or work under this Agreement remain, the sole and

County of Inyo Standard Contract - Carson & Colorado Railway, Inc.

(Independent Contractor -- Grant-In-Support)

Page 4

Modified Contract No. 127  
07252016

exclusive property of the County. At the termination of the Agreement, Applicant will convey possession and title to all such properties to County.

#### **8. WORKERS' COMPENSATION.**

Applicant shall provide Statutory California Worker's Compensation coverage and Employer's Liability coverage for not less than \$1,000,000 per occurrence for all employees engaged in services or operations under this Agreement. The County of Inyo, its agents, officers and employees shall be named as additional insured or a waiver of subrogation shall be provided.

#### **9. INSURANCE.**

For the duration of this Agreement Applicant shall procure and maintain insurance of the scope and amount specified in Attachment B and with the provisions specified in that attachment.

#### **10. STATUS OF APPLICANT.**

All acts of Applicant, its agents, officers, employees, and volunteers, relating to the performance of this Agreement, shall be performed as independent Applicants, and not as agents, officers, or employees of County.

Applicant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment A, Applicant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Applicant is to be considered an employee of County. It is understood by both Applicant and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent Applicant:

A. Applicant shall determine the method, details, and means of conducting the Project described in Attachment A.

B. Applicant shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Applicant in fulfillment of this Agreement.

C. Applicant, its agents, officers, employees, and volunteers are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent Applicant, and not as employees of County.

#### **11. DEFENSE AND INDEMNIFICATION.**

Applicant shall defend, indemnify, and hold harmless County, its agents, officers, employees, from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Applicant, or Applicant's agents, officers, employees, or volunteers. Applicant's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Applicant's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Applicant, its agents, employees, volunteers, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Applicant's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Applicant to procure and maintain a policy of insurance.

To the extent permitted by law, County shall defend, indemnify, and hold harmless Applicant, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of County, its officers, or employees.

## **12. RECORDS AND AUDIT.**

A. Records. Applicant shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, and municipal law, ordinances, regulations, and directions. Applicant shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Applicant may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Applicant, which County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Applicant. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement and further, to submit to the County Administrative Officer a written report upon completion of the Project detailing the record of expenditures under this Agreement.

## **13. SUBMISSION OF BUDGET - BUDGET ACCOUNTABILITY.**

Prior to the execution of this Agreement by County, Applicant shall submit to the County's Auditor/Controller, for her review and approval, a Scope of Work and Budget showing Applicant's proposed expenditures in conducting the Project and containing a breakdown of said expenditures by major categories and sub-categories. Said budget shall be a part of Attachment A. Applicant shall not obligate or expend funds for purposes other than those shown in the approved Scope of Work and Budget which is attached to this Agreement as Attachment A.

## **14. NONDISCRIMINATION.**

During the performance of this Agreement, Applicant, its agents, officers, employees, and volunteers shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Applicant and its agents, officers, employees, and volunteers shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Applicant shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act

## **15. ASSIGNMENT.**

This is an agreement for the services of Applicant. County has relied upon the skills, knowledge, experience, and training of Applicant as an inducement to enter into this Agreement. Applicant shall not assign or subcontract this Agreement, or any part of it, without the express written consent of County.

Further, Applicant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

**16. DEFAULT.**

If the Applicant abandons the Project, or fails to proceed with the Project in a timely manner, or fails in any way as required to conduct the Project as required, County may declare the Applicant in default and terminate this Agreement upon five (5) days written notice to Applicant. Upon such termination County will pay to Applicant all sums owed it for services and work authorized in the Scope of Work and Budget (Attachment A) which were satisfactorily performed before the date of termination.

**17. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-three (23) below.

**18. CONFIDENTIALITY.**

Applicant further agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Applicant in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Applicant agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Applicant only with the express written consent of the County. Any disclosure of confidential information by Applicant without the County's written consent is solely and exclusively the legal responsibility of Applicant in all respects.

**19. CONFLICTS.**

Applicant agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance of the Project as described in this Agreement.

**20. POST AGREEMENT COVENANT.**

Applicant agrees not to use any confidential, protected, or privileged information which is gained from the County under this Agreement, for any personal benefit, gain, or enhancement. Further, Applicant agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, and concerning such, Applicant by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

**21. SEVERABILITY.**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**22. FUNDING LIMITATION.**

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Applicant of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-three (23 (Amendment)).

**23. AMENDMENT.**

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

**24. NOTICE.**

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Applicant or County shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

County of Inyo  
County Administrative Officer Department  
P.O. Drawer N Address  
Independence, CA 93526 City and State

Applicant:  
Carson & Colorado Railway, Inc. Name  
P.O. 194 Address  
Independence, CA 93526 City and State

**25. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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**AGREEMENT BETWEEN COUNTY OF INYO  
AND CARSON & COLORADO RAILROAD, INC.  
FOR PROVISION OF GRANT-IN-SUPPORT PROGRAM SERVICES**

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

COUNTY OF INYO

APPLICANT

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

By:   
Signature

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

DAVID MULL PRES. CCRW  
Type or Print Name

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

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

  
\_\_\_\_\_  
County Auditor

APPROVED AS TO INSURANCE REQUIREMENTS:

\_\_\_\_\_  
County Risk Manager

**ATTACHMENT A**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND CARSON & COLORADO RAILWAY, INC.  
FOR PROVISION OF GRANT-IN-SUPPORT**

**TERM:**

**FROM: August 2, 2016**

**TO: February 28, 2017**

**SCOPE OF WORK AND BUDGET:**

**1. Funded Activities/Service (Grant-in-Support);**

**Funded Costs:**

Purchase and installation of a 40' x 75' metal building to house the Carson Colorado Engine #18 and installing 1,000 lineal feet of narrow gauge railroad track. Reimbursable costs include site preparation costs.

\$50,000

**Total Funded Costs      \$50,000**

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND CARSON & COLORADO RAILWAY, INC.  
FOR PROVISION OF GRANT-IN-SUPPORT**

**TERM:**

**FROM: August 2, 2016**

**TO: February 28, 2017**

**SEE ATTACHED INSURANCE PROVISIONS**

**Specifications 1**  
**Insurance Requirements for Most Contracts**  
**(Not for Professional Services or Construction Contracts)**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$500,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor.

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

### ***Primary Coverage***

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

### ***Waiver of Subrogation***

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

### ***Verification of Coverage***

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### ***Special Risks or Circumstances***

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



## AGENDA REQUEST FORM BOARD OF SUPERVISORS COUNTY OF INYO

For Clerk's Use Only: <b>AGENDA NUMBER</b>  <div style="font-size: 2em; text-align: center;">10</div>
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- Consent  
  Departmental  
  Correspondence Action  
  Public Hearing  
 Scheduled Time for  
  Closed Session  
  Informational

**FROM:** County Administrator – Information Services

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Software Maintenance for the OPTIM property tax management system

**DEPARTMENTAL RECOMMENDATION:**

A) Request your Board ratify the renewal of a Software Maintenance Agreement between Crest Software Corporation and the County of Inyo for the County's enterprise Property Tax Management System for the period July 1, 2016 through June 30, 2017 in an amount not to exceed \$34,040 contingent on Board approval of fiscal year 2016-17 budget.

**SUMMARY DISCUSSION:**

The annual maintenance agreement is to ensure basic software support is available and provided by the vendor throughout the agreement period. The maintenance agreement is renewed automatically each year, unless formally terminated by either party prior to 60 days of the automatic renewal.

**ALTERNATIVES:**

Your Board could choose not to approve the software maintenance agreement in which case basic support of the software would have to be negotiated on an as-needed basis and might not be made available by the vendor.

**OTHER AGENCY INVOLVEMENT:**

The OPTIM property tax management system is used by the Assessor's Office, Auditor's Office and Tax Collector's Office to manage and collect property tax annually.

**FINANCING:**

The cost of the support service renewal for the period from 07/01/2016– 06/30/2017 is requested in the Information Services FY 2016-17 budget [011801-5177] (Maint. of Computer Systems).

<b>APPROVALS</b>	
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: <u>yes</u> Date <u>7/11/2016</u>
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)

*[Handwritten Signature]*

Date:

7/11/16



**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 – ESAAA and IC GOLD

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Approval of declaring Oliver Products Company as a Sole Source Vendor and approve a Blanket Purchase Order to Oliver Products Company for the ESAAA and ICGOLD Nutrition Programs

**DEPARTMENTAL RECOMMENDATION:**

Request your Board 1) Declare Oliver Products Company a sole source vendor and 2) Approve a blanket purchase order for Oliver Products Company in the amount of \$25,000 for the purchase of food trays and coverings for the home delivered meals program for FY 2016/17, contingent upon approval of the FY 2016/17 budget.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

The Food Services Staff at the Bishop Senior Center have indicated that special equipment was obtained for each of ESAAA/IC GOLD's two food production kitchens (Lone Pine and Bishop) from Oliver Products Company in order to seal the film over the trays provided by said vendor. This equipment was purchased prior to this program coming into Health & Human Services.

If ESAAA/IC GOLD were to seek alternate bids for home-delivered meal packaging supplies, we would incur significant costs to replace the equipment currently used. Based on the limited funding in the ESAAA/IC GOLD budget, it is recommended that we be allowed to continue using existing equipment and supplies through Oliver Products Company, thereby declaring them as a sole source provider.

This request will allow us to have a \$25,000 Purchase Order to Oliver Products Company for FY 2016/17.

**ALTERNATIVES:**

The Board could decide not to approve this request which would result in ESAAA/IC GOLD not being able to purchase the food trays and seals, and be unable to properly continue the home delivered meals to our participants.

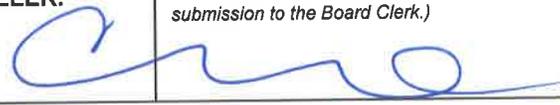
**OTHER AGENCY INVOLVEMENT:**

None

**FINANCING:**

State and Federal Nutrition dollars and County General Fund. This expense will be budgeted in the ESAAA budget (683000) at 55% and the IC Gold budget (056100) at 45% in the Food & Household Supplies object code (5131).

**APPROVALS**

<b>COUNTY COUNSEL:</b> 	<b>AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS</b> <i>(Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)</i>  Approved: <u>Yes</u> Date: <u>7/15/16</u>
<b>AUDITOR/CONTROLLER:</b> 	<b>ACCOUNTING/FINANCE AND RELATED ITEMS</b> <i>(Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)</i>  Approved: <u>yes</u> Date: <u>7/20/2016</u>

**DEPARTMENT HEAD SIGNATURE:**  
(Not to be signed until all approvals are received)  Date: 7/21/16

## Sole Source Justification Form

**Sole Source:** Is awarded for a commodity or services, which can only be purchased from one supplier, usually because of its specific technological requirements, availability or unique patented manufacture. The lack of planning is not an overriding circumstance.

**This is a sole source because:**

- There is only one known source because:
- This is a sole provider of a licensed, copyrighted, or patented good or service.
- This is a sole provider of items compatible with existing equipment or systems.
- This is a sole provider of factory-authorized warranty service.
- This is a sole provider of goods or services that perform the intended function or meet the specialized needs of the County (Please detail in an attachment).
- The requested product is used or demonstration equipment available at a lower – than-new-cost.
- One source is the only practical way to respond to overriding circumstances that make compliance with competitive procedures under the Authority's policies not in the best interest of the Authority (Please detail in an attachment).

**Please attach a memorandum to explain why the goods or services are not available elsewhere, include names and phone numbers of firms contacted.**

- Other brands/manufacturers considered
- Other suppliers considered
- Other (i.e., emergency)

<p><b>Describe the item or service, its function and the total cost estimate (if practical, separate labor and materials) in the space below or in a separate attached label: Description of Item or Service.</b></p> <p style="text-align: center; margin-top: 20px;">See ARF</p>	
<p>DEPARTMENT CONTACT PERSON &amp; TITLE Melissa Best-Baker, Senior Management Analyst</p>	
<p>DEPARTMENT NAME Inyo County Health &amp; Human Services</p>	<p>PHONE 760-878-0232</p>
<p>REQUESTED SUPPLIER/CONSULTANT NAME Oliver Products Company</p>	<p><b>SUPPLIER CONTACT PERSON</b></p>
<p>SUPPLIER ADDRESS P.O Box 78000, Dept. 78218 Detroit, MI 48278-0218</p>	<p><b>SUPPLIER CONTACT'S PHONE NUMBER</b> 616-356-2950</p>

The County's Purchasing Policy Manual Section III.(E), Exceptions to the Competitive Process/Sole Source and Section IV.(I), Sole Source Requests for Independent Contractors, describe when sole sourcing is permitted. By signing below, Requestor acknowledges that he/she has read and understands the County's policy on sole source procurements

Meln Bestman  
Signature of Requestor

7-15-2016  
Date



**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only: <b>AGENDA NUMBER</b>  12
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- Consent Hearing     Departmental     Correspondence Action     Public  
 Scheduled Time for     Closed Session     Informational

**FROM:** HEALTH & HUMAN SERVICES – Jail Medical

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Request to Extend Temporary Employee Status for two Jail On-Call Nurses

**DEPARTMENTAL RECOMMENDATION:**

Request Board approve an up to an additional six (6) months, not to exceed January 31, 2017, the temporary employee status of two nurses that provide the on-call response to inmate health care issues for the Jail and Juvenile Center.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

As a result of the closure of Southern Inyo Hospital (SIH) in December 2015, the contract for jail medical services was necessarily terminated. Required services include those of a California-licensed physician and California-licensed Registered Nurses, all of whom participate in a 24-hour/365-day/year response to inmate health care needs in our adult and juvenile correctional facilities. The Department implemented an on-call system using internal HHS nurses from both Public Health and Behavioral Health under the oversight of our medical director of Jail services. However, the internal system was fragile, as both Public Health and Behavioral Health have experienced vacant nurse positions since 2014. In February 2016, HHS requested authorization to hire two nurses on a temporary status, as it appeared likely that as a result of the implementation of the on-call system, two nurses were likely to resign. The request for temporary nursing staff was authorized and two nurses were hired as of March 1, 2016.

The Department has been working closely with Personnel staff and the bargaining unit around next steps for nurse coverage at the Jail, but more time is needed to finalize a longer-term solution. In the current Budget process, the Department is requesting authorization to maintain the current model by authorizing positions that will solely provide on-call nursing services. However, additional time is needed to address outstanding issues while working through the Budget proceedings. The Department is respectfully requesting your Board approve the continued temporary employment status of two nurses for up to an additional six (6) months.

**ALTERNATIVES:**

Board could decline to approve this request, resulting in existing nursing staff being placed on-call and risking nurse resignations in both Public Health and Behavioral Health, where vacancies continue to exist and potentially may result in significant service reductions and/or elimination.

**OTHER AGENCY INVOLVEMENT:**

Inyo County Sheriff and Jail staff, Inyo County Probation

**FINANCING:**

This funding for Stand-by and Overtime costs is being paid by Health Realignment (045100) funds.

**APPROVALS**

<b>COUNTY COUNSEL:</b>	<b>AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS</b> <i>(Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)</i>  Approved: _____ Date: _____
<b>AUDITOR/CONTROLLER:</b>	<b>ACCOUNTING/FINANCE AND RELATED ITEMS</b> <i>(Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)</i>  Approved: _____ Date: _____
<b>PERSONNEL DIRECTOR:</b>	<b>PERSONNEL AND RELATED ITEMS</b> <i>(Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)</i>  Approved:  _____ Date: <u>7/25/16</u>
<b>BUDGET OFFICER:</b>	<b>BUDGET AND RELATED ITEMS</b> <i>(Must be reviewed and approved by the Budget Officer prior to submission to the Board Clerk.)</i>  Approved: _____ Date: _____

**DEPARTMENT HEAD SIGNATURE:**  Date: 7-25-16  
(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**

13

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

**FROM:** HEALTH & HUMAN SERVICES – Social Services

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Approve a Blanket Purchase Order to United States Postal Service for postage

**DEPARTMENTAL RECOMMENDATION:**

Request your Board authorize the issuance of a blanket purchase order for Pitney Bowes in the amount of \$13,000 for postage in the Social Services Programs for FY 2016/17.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

Social Service programs are required to mail notices to participants. We utilize the central print through C-IV to mail all of the required employment and eligibility program notices which uses Pitney Bowes for these mailings. Our adult and child service programs need to mail court notices and reports. They utilize a Pitney Bowes postage meter that was approved through Information Services for these activities. In past years, we have only had to receive the CAO approval because the amount was less than \$10,000. However, we are seeing an increase in mailings and are requesting the ability to issue a blanket purchase order to cover these required costs.

**ALTERNATIVES:**

The Board could decide not to approve this request which would result in HHS being able to send out the required notifications to participants.

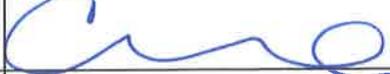
**OTHER AGENCY INVOLVEMENT:**

None

**FINANCING:**

State and Federal dollars. This expense will be budgeted in the Social Services budget (055800) in the General Operating object code (5311). No County General Funds.

**APPROVALS**

<b>COUNTY COUNSEL:</b>	<b>AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS</b> (Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)
	Approved: <u>Yes</u> Date: <u>7/15/16</u>
<b>AUDITOR/CONTROLLER:</b>	<b>ACCOUNTING/FINANCE AND RELATED ITEMS</b> (Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)
	Approved: <u>yes</u> Date: <u>7/20/2016</u>
<b>INFORMATION SERVICES DIRECTOR:</b>	<b>INFORMATION SERVICES AND RELATED ITEMS</b> (Must be reviewed and approved by the Director of Information Services prior to submission to the Board Clerk.)
	Approved: <u>yes</u> Date: <u>7/20/2016</u>

**DEPARTMENT HEAD SIGNATURE:**

(Not to be signed until all approvals are received)



Date: 7/21/16

## Sole Source Justification Form

**Sole Source:** Is awarded for a commodity or services, which can only be purchased from one supplier, usually because of its specific technological requirements, availability or unique patented manufacture. The lack of planning is not an overriding circumstance.

**This is a sole source because:**

- There is only one known source because:
- This is a sole provider of a licensed, copyrighted, or patented good or service.
- This is a sole provider of items compatible with existing equipment or systems.
- This is a sole provider of factory-authorized warranty service.
- This is a sole provider of goods or services that perform the intended function or meet the specialized needs of the County (Please detail in an attachment).
- The requested product is used or demonstration equipment available at a lower – than-new-cost.
- One source is the only practical way to respond to overriding circumstances that make compliance with competitive procedures under the Authority’s policies not in the best interest of the Authority (Please detail in an attachment).

**Please attach a memorandum to explain why the goods or services are not available elsewhere, include names and phone numbers of firms contacted.**

- Other brands/manufacturers considered
- Other suppliers considered
- Other (i.e., emergency)

<p><b>Describe the item or service, its function and the total cost estimate (if practical, separate labor and materials) in the space below or in a separate attached label: Description of Item or Service.</b></p> <p style="text-align: center; margin-top: 20px;">See ARF</p>	
<p><b>DEPARTMENT CONTACT PERSON &amp; TITLE</b> Melissa Best-Baker, Senior Management Analyst</p>	
<p><b>DEPARTMENT NAME</b> Inyo County Health &amp; Human Services</p>	<p><b>PHONE</b> 760-878-0232</p>
<p><b>REQUESTED SUPPLIER/CONSULTANT NAME</b> Pitney Bowes, Inc.</p>	<p><b>SUPPLIER CONTACT PERSON</b></p>
<p><b>SUPPLIER ADDRESS</b> P.O Box 371877 Pittsburgh, PA 15250-7887</p>	<p><b>SUPPLIER CONTACT'S PHONE NUMBER</b></p>

The County's Purchasing Policy Manual Section III.(E), Exceptions to the Competitive Process/Sole Source and Section IV.(I), Sole Source Requests for Independent Contractors, describe when sole sourcing is permitted. By signing below, Requestor acknowledges that he/she has read and understands the County's policy on sole source procurements

  
\_\_\_\_\_  
*Signature of Requestor*

  
\_\_\_\_\_  
*Date*



**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:** HEALTH & HUMAN SERVICES, Social Services

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Approval to Pay Association Dues

**DEPARTMENTAL RECOMMENDATION:**

Request approval to pay County Welfare Directors Association of California (CWDA) dues for fiscal year 2016-2017 in an amount not to exceed \$16,975.00, contingent upon the Board's adoption of the FY 2016-17 budget.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

This request comes before you, consistent with the County Purchasing Policy, for approval of payment of annual dues. The 2016-2017 amount is \$808 more than prior year's dues. CWDA, the association of Social Services Directors (a.k.a. Welfare Directors), is staffed by a very experienced team that works closely with CSAC and RCRC to ensure education of legislators, advocacy with statewide stakeholders, and fiscal advocacy with the State for County-administered Social Services programs and budgets. In Inyo County those programs include the following:

- All Social Services (CalWORKS/TANF eligibility determination, Medi-Cal Administration, CalFresh, Child Welfare Services, Foster Care Licensing and Services, Family Day Care Licensing, Child Abuse Prevention, Wraparound Intensive Services, Adult Protective Services, In-Home Supportive Services, Federal IV-E Quality Assurance for Child Welfare & Juvenile Probation)
- Foster Care Administration
- Temporary Assistance to Needy Families Administration
- Disaster-Related Shelter/Evacuation Care staff costs
- Oversight of Matching Realignment Funds for California Children's Services
- Local administration of Workforce Investment Act, General Assistance, and County Medical Services Program (CMSP)

Most of the Social Services programs have both federal and state laws, regulations and budget controls, with varying cost sharing ratios and/or matches required. The fiscal and political context for social services is ever-changing. Client advocacy and poverty law groups abound both nationally and statewide. CWDA has proved to be a very organization, bringing needed resources – especially for small counties – to tracking legislation and litigation as they impact local county issues, monitoring cost shifting to counties, coordinating closely with CSAC to ensure alignment of positions on issues, and assisting counties, in general service, around implementation concerns. Additionally, Social Services administrative funding assists in providing an overarching funding structure for our Health and Human Services Department that assists in reducing administrative costs in other budgets, such as IC-GOLD senior programs.

**ALTERNATIVES:**

CWDA probably will continue to function even if Inyo does not pay its dues, at least for now.

**OTHER AGENCY INVOLVEMENT:**

All of California's County Social Services programs

**FINANCING:**

The funding is a combination of Federal, State, and Social Services Realignment funds. This expense will be budgeted in Social Services (055800) in General Operating (5311).

**APPROVALS**

**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: 7/14/2016

**DEPARTMENT HEAD SIGNATURE:**

(Not to be signed until all approvals are received)



Date: 7-15-16



**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

15

FROM: Public Works Department

FOR THE BOARD MEETING OF: August 2, 2016

SUBJECT: Approval of a resolution accepting the construction and filing the Notice of Completion for the Animal Shelter Fencing Project.

**DEPARTMENTAL RECOMMENDATIONS:** Request your Board approve a resolution entitled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Authorizing the Recording of a Notice of Completion for the Animal Shelter Fencing Project" accepting the construction and authorize the recording of a Notice of Completion for the Animal Shelter Fencing Project.

**CAO RECOMMENDATION:** N/A

**SUMMARY DISCUSSION:** Tahoe Fence of Mound House, NV recently completed construction on the Animal Shelter Fencing Project. The objective of the Animal Shelter Fencing Project was to install a six foot tall chain link fence around the perimeter of the Big Pine Animal Shelter. Construction of the fence also included two 6' tall 24' wide split swing gates as well as two 6' tall 4' wide access gates in addition to tying into an existing fence. The final construction contract amount for the Animal Shelter Fencing Project is \$23,340.00.

On June 29, 2016, the final inspection was performed and construction was determined to be complete and to the satisfaction of the Public Works Director. Accordingly, the Director is requesting your Board adopt the attached Resolution, which accepts the completed fence and authorizes the Public Works Director to record a Notice of Completion for the project.

In addition to formally accepting the work, the Notice of Completion begins the period during which stop notices may be placed against the work. In the event that no stop notices are filed, the retention shall be returned to the Contractor.

**ALTERNATIVES:** Your Board could choose not to approve the Resolution. Consequently, the project would not be formally accepted and the Notice of Completion could not be filed. Choosing not to approve the Resolution is not recommended as it will extend the period during which stop notices can be submitted and will delay the release of retention monies to the Contractor.

**OTHER AGENCY INVOLVEMENT:** County Counsel has reviewed the Resolution. The County Auditor's office will pay the retention currently being withheld.

**FINANCING:** The project is funded by the Animal Shelter and is being paid through the Animal Shelter Budget Unit 010206, Object Code 5700.

**APPROVALS**

COUNTY COUNSEL:

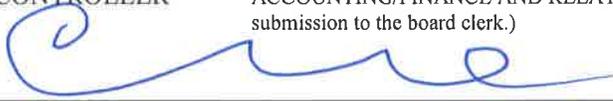
AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.)



Approved: Yes Date 7/15/16

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 7/19/2016

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: 7/19/16

**RESOLUTION #2016 -**

**“A RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE  
COUNTY OF INYO, STATE OF CALIFORNIA  
AUTHORIZING THE RECORDING OF A NOTICE OF COMPLETION  
FOR THE  
ANIMAL SHELTER FENCING PROJECT”**

**WHEREAS**, Clint Quilter, Director of the Public Works Department of the County of Inyo, has determined that the Animal Shelter Fencing Project has been completed by Tahoe Fence of Mound House, Nevada In accordance with the Project Plans and Specifications.

**NOW, THEREFORE, BE IT RESOLVED**, that the Director of Public Works is hereby authorized and directed to sign and file with the County Recorder a separate Notice of Completion pertaining to the Animal Shelter Fencing Project.

Passed, approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

\_\_\_\_\_  
Jeff Griffiths, Chairperson, Board of Supervisors

**ATTEST:**

Kevin Carunchio, Clerk of the Board

by \_\_\_\_\_  
Kevin Carunchio, Clerk

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

County of Inyo  
c/o Director of Public Works  
Public Works Department  
168 N. Edwards Street  
P.O. Drawer Q  
Independence, CA 93526

---

Notice of Completion

## NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. A work of construction known as the Animal Shelter Fencing Project on the property hereinafter described was completed on July 29, 2016 and was accepted by the Board of Supervisors, County of Inyo on \_\_\_\_\_.
2. The property on which the Animal Shelter Fencing Project has been completed and is located at 1001 County Road in Big Pine, CA 93513 .
3. The County of Inyo, a political subdivision of the State of California, the address of which is 224 North Edwards Street, P.O. Drawer Q, Independence, CA 93526, owns and maintains the property located at 1001 County Road, Big Pine, CA.
4. The undersigned, Clint Quilter, is the Director of Public Works of the County of Inyo and has been duly authorized pursuant to Resolution adopted \_\_\_\_\_, by the Board of Supervisors of the County of Inyo to execute and file this Notice of Completion.
5. The name of the original contractor that constructed the Animal Shelter Fencing Project, pursuant to contract with the County, is Tahoe Fence of Mound House, NV.

Pursuant to the contract, the contractor was required to furnish all labor, materials, methods or processes, implements, tools, machinery, equipment, transportation services, and all other items and related functions which are necessary or appurtenant to construct the project designated in the contract.

COUNTY OF INYO

Dated:

By: \_\_\_\_\_  
Clint Quilter, Director of Public Works





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: Public Works

FOR THE BOARD MEETING OF: August 2, 2016

SUBJECT: Approval to ratify the contract with Shoshone Propane of Pahrump, Nevada \$2,700.00 for a not to exceed amount of \$22,700.00 per the approved Contract Change Order for additional electrical services.

DEPARTMENTAL RECOMMENDATION: Request your Board Approve to ratify the contract with Shoshone Propane of Pahrump, Nevada \$2,700.00 for a not to exceed amount of \$22,700.00 per the approved Contract Change Order for additional electrical services.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Shoshone Propane is currently under contract to replace the HVAC units at the Tecopa Community Center. While performing the work, Shoshone Propane noticed additional electrical work is needed to complete the Tecopa Community Center HVAC Replacement Project. Amendment No. 1 will add the additional funds, \$2,700.00 for the additional work, so Shoshone Propane can deliver a working HVAC system to the County.

The increase for these services are more than 10% of the contract therefore a Board approval is necessary.

Public Works recommends your Board approve the increase to the contract with Shoshone Propane of Pahrump, Nevada so Shoshone Propane can finalize the project and provide a working HVAC system to the County.

ALTERNATIVES:

Not approve the Contract increase. This is not recommended as the Tecopa Community Center is currently without heat/cooling and the additional electrical work is needed to complete the project.

OTHER AGENCY INVOLVEMENT: The Office of the County Counsel, the Auditor's Office for payment of the contract.

FINANCING:

The funds for this project will be provided through Budget 056100, Object Code 5265.

Table with 2 columns: Role (County Counsel, Auditor/Controller, Personnel Director) and Description of items to be reviewed. Includes handwritten signatures and dates for each approval.

DEPARTMENT HEAD SIGNATURE: [Signature] Date: 7/19/16

**CONTRACT CHANGE ORDER**

DIRECTOR CLINT QUILTER

Change Requested By  Engineer  Contractor

CCO NUMBER 1	SUPL. NUMBER N/A	CNTY PROJECT NUMBER ZP 15-057	PROJECT Tecopa Community HVAC Replacement	FEDERAL NUMBER(S)
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TO

**SHOSHONE PROPANE**

Contractor

You are directed to make the following changes from the plans and specifications or do the following described work not included in the plans and specifications for this contract. **NOTE: This change order is not effective until approved by the Engineer.**

Description of work to be done, estimate of quantities and prices to be paid. (Segregate between additional work at contract price, agreed price and force account.) Unless otherwise stated, rates for rental of equipment cover only such time as equipment is actually used and no allowance will be made for idle time. The last percentage shown is the accumulated increase or decrease from the original quantity in the Engineer's Estimate.

Agreed Price  Extra Work Force Account  Additional Work at Contract Price  Change to Plans/Specs  Change to Material Price/Quantity

DESCRIPTION OF WORK:

The following adjustment(s) will be made for units of work in excess of 10 percent of the engineer's estimate: Item No. 3, Install New Conduit, Conductors, Junction Boxes, Disconnects & Flexible Connections as Required for two (2) New Rooftop HVAC Units.

SUMMARY COST:

No.	BID ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
3	Install New Conduit, Conductors, Junction Boxes, Disconnects & Flexible Connections as Required for two (2) New Rooftop HVAC Units.	LS	1	\$2,700.00	\$2,700.00

Original Contract Amount	\$20,000.00	Change Order Estimate Total	\$2,700.00
Total Previous Change Orders	\$0.00		
Total Prior to this Change Order	\$20,000.00	Payment for this change order is not to exceed	\$2,700.00
Amount of this Change Order	\$2,700.00		
Revised Contract Total to Date	<b>\$22,700.00</b>		

CCO Code  No Change  Increase  Decrease \$2,700.00

By reason of this change order the time of completion will be adjusted as follows

**SUBMITTED BY**

SIGNATURE 	(PRINT NAME & TITLE) Travis Dean, Resident Engineer	DATE 7-12-16
---	--	-----------------

**APPROVAL RECOMMENDED BY**

SIGNATURE 	(PRINT NAME & TITLE) Chantel Brown, Project Manager	DATE 7.12.16
---	--	-----------------

**ENGINEER APPROVAL BY**

SIGNATURE	(PRINT NAME & TITLE) Clint Quilter, Public Works Director	DATE
-----------	--	------

We, the undersigned contractor, have given careful consideration to the change(s) proposed and agree, if this proposal is approved, that we will provide all equipment, furnish the materials, except as may otherwise be noted above, and perform all the services necessary for the work specified above, and will accept as full payment therefor the prices shown above. **NOTE: if you, the contractor, do not sign acceptance of this order, your attention is directed to the requirements of the specification as to proceeding with the ordered work and filing a written protest within the time therein specified.**

**CONTRACTOR ACCEPTANCE BY**

SIGNATURE	(PRINT NAME & TITLE)	DATE
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**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only:  
AGENDA NUMBER

17

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

**FROM:** Inyo County Planning Department

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** EB-5 Immigrant Investor Program, letter to Diane Feinstein asking for consideration of support.

**DEPARTMENTAL RECOMMENDATION:** Receive a presentation from staff on the EB-5 Immigrant Investor Program, review draft correspondence and authorize the Chair to sign.

**SUMMARY DISCUSSION:** In 1990 Congress created the EB-5 visa program as a tool to stimulate the U.S. economy by encouraging foreign capital investments and job creation. The EB-5 program makes immigrant visas and subsequent "green cards" available to foreign nationals who invest at least \$1,000,000 in New Commercial Enterprises (NCE) that will create or preserve at least 10 full-time jobs in the United States. A foreign national may invest \$500,000 if the investment is in a Targeted Employment Area (TEA), defined to include certain rural areas and areas of high unemployment.

A TEA is an area that, at the time of investment, is considered a rural area or an area that has an unemployment rate of at least 150-percent of the national average.

A rural area is defined as any area outside a metropolitan statistical area (as designated by the Office of Management and Budget) or outside the boundary of any city or town having a population of 20,000 or more according to the decennial census, which means all of Inyo County is a rural area per the requirements of this program and therefore a TEA.

In 1992, Congress created the regional center program to help implement EB-5 projects. It allows private-sector entities set up regional centers that can pool foreign investors' money to build larger-scale projects. The projects still needed to show that they will create or preserve at least 10-jobs per investor, but unlike the original program, the jobs could be direct or indirect. Indirect jobs are jobs that have been created as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor.

All immigrant investors must file individual petitions that include evidence that their investment capital was fully invested or is actively in the process of being invested and that the invested capital was acquired through lawful sources.

If approved, the immigrant investor may be admitted to the US as a conditional permanent resident. Approximately two years after admission as a conditional permanent resident, the immigrant investor is required to petition United States Citizenship and Immigration Services for the removal of the conditions, at which time they have to prove that they invested or were actively in the process of investing the capital and that they sustained those actions for the period of residence in the US, and that job creation requirements were met or will be met within a reasonable time. If approved, the conditions on the investor's permanent residence are removed.

Sen. Dianne Feinstein has been a strong advocate for ending the EB-5 and regional center program as she believes that letting foreign nationals get green cards for themselves and their families while, as she said: “individuals unable to buy their way into the country remain trapped in seemingly endless visa backlogs that often last more than 20-years” is not fair. She believes: “the program is deeply unfair, sends the wrong message about this country’s values and is prone to fraud and abuse.”

Jack Stone, owner of the Darwin mine, believes that the EB-5 program implemented through one of the regional centers could be used to bring investment into the Darwin mine. He has been working with Chinese investors who are interested in using the EB-5 program with the help of a regional center to invest the required \$1,000,000 in the Darwin mine to extract zinc oxide. Mr. Stone is asking for the County to ask its Congressional delegation, and specifically Senator Feinstein, to support the continuation of the EB-5 program due to its potential to attract capital investments to Inyo County including, possibly, the Darwin Mine. This issue will be up for review in the House and Senate again in September 2016. Staff has prepared the attached letter for consideration by your Board and Mr. Stone may address the Board regarding details of his project as it relates to the EB-5 program.

**OTHER AGENCY INVOLVEMENT:** California Office of Mining and Reclamation, Bureau of Land Management, United States Citizenship and Immigration Services

**FINANCING:** General funds are utilized to monitor State and Federal policies and programs.

<b><u>APPROVALS</u></b>	
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>
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>
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>

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

  
Date: 7/18/16



## BOARD OF SUPERVISORS COUNTY OF INYO

P. O. BOX N • INDEPENDENCE, CALIFORNIA 93526  
TELEPHONE (760) 878-0373 • FAX (760) 878-2241  
e-mail: dellis@inyocounty.us

MEMBERS OF THE BOARD  
DAN TOTTEROH  
JEFF GRIFFITHS  
RICK PUCCI  
MARK TILLEMANS  
MATT KINGSLEY

KEVIN D. CARUNCHIO  
*Clerk of the Board*

DARCY ELLIS  
*Assistant Clerk of the Board*

August 2, 2016

The Honorable Senator Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

**SUBJECT:** EB-5 Immigrant Investor Program

Dear Senator Feinstein:

The Inyo County Board of Supervisors appreciates your consideration of Inyo County's concerns throughout the years on many issues, and particularly those affecting the county's limited and relatively-homogenous economy. On behalf of the Board of Supervisors, I am writing to ask you to consider supporting the EB-5 Immigrant Investor Program as it may help improve the Inyo County economy.

We understand and appreciate your concerns about the program's potential unfairness to all people trying to legally immigrate to the United States. The EB-5 Immigrant Investor Program could, however, be a tool for rural communities, such as ours, to attract much needed investment. Inyo County qualifies as a Targeted Employment Area based on a low population number and sees this program as potentially bringing economic opportunities to local communities.

An Inyo County mine owner brought the EB-5 program to our attention. The implementation of this program could be used to bring investment to a currently closed mine that has been impossible to otherwise fund. This miner has been in contact with Chinese investors who are interested in using the EB-5 program to invest the required \$1,000,000 into the mine. This could be an economic boon to a small desolate community and to the County as a whole. Previously, the operation of this mine was associated with the zenith of diversified economic activity in Lone Pine California and surrounding communities. Reopening this mine would bring living wage jobs to the area plus, other peripheral jobs in the refining and transport of mined product. This is just one example of how the EB-5 Immigrant Investor Program could benefit rural communities like Inyo County. We would appreciate your support of this program any other opportunities that can provide stimulus for rural development.

Thank you for your consideration.

Sincerely,

Jeff Griffiths - Chairperson, Inyo County Board of Supervisors

cc: Senator Barbara Boxer  
Congressman Paul Cook  
Inyo County Board of Supervisors  
Kevin Carunchio, CAO



**AGENDA REQUEST FORM**  
**BOARD OF SUPERVISORS**  
**COUNTY OF INYO**

For Clerk's Use Only:  
**AGENDA NUMBER**

18

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

**FROM:** Recycling and Waste Management

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Authorize Personnel to recruit for and fill a vacant Equipment Operator position.

**DEPARTMENTAL RECOMMENDATION:**

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

- 1) The availability of funding for the requested position exists in the Solid Waste budget as certified by the Department Head and concurred with by the County Administrator and Auditor-Controller; and
- 2) where internal candidates meet the qualifications of the position, the vacancy could possibly be filled through an internal recruitment, however it would be more appropriate to fill the position through an open recruitment; and
- 3) hire one Equipment Operator I, at Range 58 (\$3,310 - \$4,027), or Equipment Operator II, at Range 60 (\$3,471 - \$4,216) depending on the qualifications of the selected candidate as determined by the County Administrator .

**SUMMARY DISCUSSION:**

The FY 2016-2017 Manpower Report (approved by your Board as part of the FY 2016-2017 County Budget) identifies the landfill Equipment Operator positions (Range 58 or Range 60) as being assigned to the County's Recycling and Waste Management Program to provide necessary operation of heavy equipment for the sanitary care of the landfills. This position is critical to the operation of the County landfills. The Equipment Operators compact high volumes of waste for the sanitary burial of trash, operate wood and green waste chipping equipment to assist Inyo County in meeting diversion goals, bury dead animals in a timely fashion to meet health standards, haul cover dirt from the borrow area to the landfill face to meet cover standards, provide maintenance of equipment and vehicles, assist the public with guidance on where to unload waste, maintain septic ponds to allow for local septic companies a sanitary location of disposal, and haul roll off bins from landfills and transfer stations throughout Owens Valley.

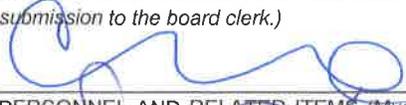
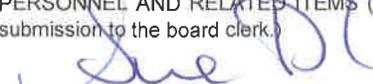
**ALTERNATIVES:**

Your Board could choose not to authorize filling the vacant position; however, this is not recommended, as the functionality of the Recycling and Waste Management programs will suffer. When an Equipment Operator position is vacant then the current equipment operators will need to work overtime to cover for the vacant position.

**OTHER AGENCY INVOLVEMENT:** Personnel

**FINANCING:** Funding for this position is included in the FY 20016-2017 Solid Waste Budget.

**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: <u>yes</u> Date <u>7/25/2016</u>
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: <u>✓</u> Date <u>7/22/16</u>

**DEPARTMENT HEAD SIGNATURE:**

(Not to be signed until all approvals are received)



Date: 7/27/16



**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only: <b>AGENDA NUMBER</b>
19

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

**FROM:** HEALTH & HUMAN SERVICES

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT: Standard Agreement between the County of Inyo and the California Department of Public Health, AIDS Drug Assistance Program, Office of AIDS.**

**DEPARTMENTAL RECOMMENDATION:**

Request Board ratify and approve the Standard Agreement Between the County of Inyo and California Department of Public Health, AIDS Drug Assistance Program, Office of AIDS, Agreement # 16-10337, to continue Inyo County HHS/Public Health as an Enrollment site, for the period of July 1, 2016 through June 30, 2019 and authorize the Director of Health and Human Services to sign the Standard Agreement, the Security Requirement Protections and Confidentiality Checklist (Exhibit F), the Contractor Certification CCC-307 form and the Darfur Contracting Act form.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

There is no funding attached to this request. The request is to provide the following documents to the CDPH so that we may continue as an Enrollment Site and will continue to be responsible for coordinating state programs, services and activities related to HIV and AIDS: 1) Standard Agreement (STD213) Cover page; 2) Exhibit A-I, CCC-307-Contractor Certification; 4) Darfur Contracting Act Certification.

This agreement continues the administration of the AIDS Drug Assistance Program (ADAP) enrollment process provided by Inyo County Health & Human Services/Public Health Division. ADAP is a medication assistance program that benefits Inyo County clients infected with HIV, who have limited health insurance and resources to obtain needed medications.

**ALTERNATIVES:**

Non-acceptance of this request would mean that we would not be an Enrollment Site as required by CDPH and therefore could not fulfill the requirements of the ADAP program.

**OTHER AGENCY INVOLVEMENT:**

None

**FINANCING:**

There is no funding associated with this agreement.

<b>APPROVALS</b>	
<b>COUNTY COUNSEL:</b> 	<b>AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS</b> (Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.) Approved: <u>Yes</u> Date: <u>7/15/16</u>
<b>AUDITOR/CONTROLLER:</b> 	<b>ACCOUNTING/FINANCE AND RELATED ITEMS</b> (Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.) Approved: <u>yes</u> Date: <u>7/19/2016</u>
<b>PERSONNEL DIRECTOR:</b>	<b>PERSONNEL AND RELATED ITEMS</b> (Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.) Approved: _____ Date: _____
<b>BUDGET OFFICER:</b>	<b>BUDGET AND RELATED ITEMS</b> (Must be reviewed and approved by the Budget Officer prior to submission to the Board Clerk.) Approved: _____ Date: _____

**DEPARTMENT HEAD SIGNATURE:** Jean Turner Date: 7-20-16  
(Not to be signed until all approvals are received)

REGISTRATION NUMBER	AGREEMENT NUMBER 16-10337
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1. This Agreement is entered into between the State Agency and the Contractor named below:

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

CONTRACTOR'S NAME (Also referred to as Contractor)  
 County of Inyo

2. The term of this Agreement is: July 1, 2016 through June 30, 2019

3. The maximum amount of this Agreement is: \$ 0  
 Zero dollar contract solely based on usage

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	14 pages
Exhibit AI – Definition of Terms	2 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit C * – General Terms and Conditions	<u>GTC 610</u>
Exhibit D – HIPAA Business Associate Addendum	15 pages
Exhibit E – Notice of Privacy Practices	4 pages
Exhibit F – Security Requirements, Protections, and Confidentiality Checklist	1 page
Exhibit G – Plan for Transporting Confidential ADAP Client Files (Policy and Procedure)	2 pages
Exhibit H – Non Discrimination Clause	1 page
Exhibit I – Confidentiality Requirements	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.**

<b>CONTRACTOR</b>		<b>California Department of          General Services Use Only</b>
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 Jean Turner, Director		
ADDRESS 163 May Street Bishop, CA 93514		
<b>STATE OF CALIFORNIA</b>		
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: OA Budget Act 2016

**Exhibit A**  
Scope of Work  
July 1, 2016 through June 30, 2019

**1) Service Overview**

California Health and Safety Code 131019 designates the California Department of Public Health (CDPH), Center for Infectious Diseases , Office of AIDS (OA) as the lead agency within the state responsible for coordinating state programs, services and activities related to Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS).

The Contractor agrees to provide CDPH/OA, the services described herein for the provision of the AIDS Drug Assistance Program (ADAP) enrollment services, which includes both ADAP's Medication Program and Health Insurance Assistance Programs. This contract agreement will be in effect for three consecutive fiscal years (FY) beginning in FY 2016-17 through FY 2018-19 (July 1, 2016 – June 30, 2019).

Refer to Exhibit A, Attachment I, "Definitions of Terms" to review definitions of acronyms and other contract related terms and references.

**2) Service Location**

The services shall be performed at Inyo County Health and Human Services Department, located at 207 A West South Street, Bishop, CA 93514.

**3) Service Hours**

The services shall be provided during normal Contractor working hours.

**4) Project Representatives**

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

<b>California Department of Public Health</b> OA ADAP Branch Chief Niki Dhillon  Telephone: (916) 449-5942 Fax: (916) 449-5859 Email: Niki.Dhillon@cdph.ca.gov	<b>County of Inyo</b> Director Jean Turner  Telephone: (760) 873-3305 Fax: (760) 873-7800 Email: jturner@inyocounty.us
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B. Direct all inquiries to:

<b>California Department of Public Health</b> OA ADAP Advisor Marques Almeida  MS 7700, P.O. Box 997426 1616 Capitol Avenue, Suite 616 Sacramento, CA 95899-7426  Telephone: (916) 445-7572 Fax: (916) 449-4909 Email: marques.almeida@cdph.ca.gov	<b>County of Inyo</b> ADAP Enrollment Worker Gerry Tanksley  207 A West South Street Bishop, CA 93514  Telephone: (760) 873-7868 Fax: (760) 873-8067 Email: gtanksley@inyocounty.us
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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  
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5) **Services to be Performed**  
 A) **Major Function, Task and Activities**

The Contractor shall:

Enrollment Site Requirements:	Time Line	Responsible Party	Performance Measure and/or Deliverables
<p><b>A.1. ADAP Enrollment Site Contact Requirement:</b></p> <p>Maintain an ADAP Enrollment Site Contact to ensure compliance with the requirements of this contract agreement on behalf of the ADAP Enrollment Site and facilitate required information exchange between the Enrollment Site, CDPH/OA/ADAP, and CDPH/OA/ADAP's contracted EBM.</p>	<p>Throughout the life of the contract</p>	<p>Authorized Site Administrator</p>	<p>ADAP Site Contact Name and contact information must be identified in Section 4B. Provide written notice to the assigned ADAP Advisor immediately of any changes to the ADAP Enrollment Site Contact.</p>
<p><b>A.2. Nondiscrimination Requirements:</b></p> <p>Comply with the provisions as stated in Exhibit H, "Nondiscrimination Clause" (STD 17A)." The ADAP Enrollment Site shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, or sexual orientation.</p>	<p>Must be maintained through the life of the contract</p>	<p>Authorized Site Administrator /Agency's EEO Officer</p>	<p>Indicate compliance on the "Security Requirements, Protections, and Confidentiality Checklist", Exhibit F.</p>

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<p><b>A.3. Information Privacy and Security Requirements:</b></p> <p>All personnel conducting ADAP enrollment services must abide by all applicable laws and CDPH/OA/ADAP guidelines regarding confidentiality of ADAP client eligibility files and protected health information when accessing or submitting ADAP client data.</p>			
<p>i. Ensure compliance with the provisions as stated in Exhibit D, "HIPAA Business Associate Addendum (CDPH HIPAA BAA 8-14).</p>	<p>Must be maintained through the life of the contract. Contractor shall also continue to extend the protections of these provisions to protected health information upon termination or expiration of the agreement until its return or destruction.</p>	<p>ADAP Enrollment Site Contact</p>	<p>Notify the assigned ADAP Advisor immediately by phone call plus email or fax when a potential breach has occurred. ADAP EWs may be deactivated if more than two potential breaches occur within a calendar year. Enrollment Sites may also be deactivated if potential breaches are committed by more than two EWs in a calendar year.</p>
<p>ii. Ensure that all ADAP EWs employed by or volunteering at the Enrollment Site are issued/assigned an Agency email address.</p>	<p>At the time of ADAP EW activation and throughout the</p>	<p>Authorized Site Administrator /Site Contact</p>	<p>Verified when ADAP Enrollment Worker(s) email address is provided to assign CDPH/OA/ADAP Advisor.</p>

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<p><i>ADAP EWs are prohibited from using a personal email address (i.e. gmail, yahoo, etc.) for ADAP related correspondence.</i></p>	<p>life of the contract.</p>		
<p>iii. Ensure compliance with the provisions as stated in "Exhibit E, "Notice of Privacy Practices", and ensure that the notice is posted at the Enrollment Site.</p> <p>iv. Review and sign the "Agreement by Employee/Contractor to Comply with Confidentiality Requirements (CDPH 8689)" form (Exhibit I).</p> <p>v. Ensure that only certified ADAP EWs have access to ADAP client eligibility file information, unless otherwise authorized by law. Please refer to the following confidentiality table and flowchart that pertains to your ADAP enrollment site:</p> <ul style="list-style-type: none"> <li>• For a Community Based Organization go to: <a href="http://www.cdph.ca.gov/programs/aids/Documents/ADAPSite-CBO-TableFlowchart.pdf">http://www.cdph.ca.gov/programs/aids/Documents/ADAPSite-CBO-TableFlowchart.pdf</a></li> <li>• For a Health Care Provider – go to: <a href="http://www.cdph.ca.gov/programs/aids/Documents/ADAPSite-HCP-TableFlowchart.pdf">http://www.cdph.ca.gov/programs/aids/Documents/ADAPSite-HCP-TableFlowchart.pdf</a></li> <li>• For a Local Public Health Department – go to: <a href="http://www.cdph.ca.gov/programs/aids/Documents/ADAPSite-PHD-TableFlowchart.pdf">http://www.cdph.ca.gov/programs/aids/Documents/ADAPSite-PHD-TableFlowchart.pdf</a></li> </ul>	<p>Must be maintained through the life of the contract.</p> <p>Annually</p> <p>Must be maintained through the life of the contract.</p>	<p>ADAP Enrollment Site Contact</p> <p>ADAP Enrollment Site Contact and ADAP EW(s)</p> <p>ADAP Enrollment Site Contact and ADAP EW(s)</p>	<p>Indicate compliance on the "Security Requirements, Protections, and Confidentiality Checklist", Exhibit F.</p> <p>Submit completed CDPH 8689 form via the EBM upon completion of new or existing ADAP EW training. Site Contacts who are not EWs must submit the 8689 to their assigned ADAP Advisor.</p> <p>Notify the assigned ADAP Advisor immediately when a potential breach has occurred.</p>

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<p><b>A.4. ADAP Enrollment Site Information Technology/Equipment Requirements:</b></p> <p>i. Ensure internet access and equipment to scan and upload ADAP applicant/client eligibility documents to the CDPH/OA/ADAP's EBM secure web-based enrollment system.</p> <p>ii. Only desktop computers are to be used to conduct ADAP enrollment services. The use of laptop computers or other hand held electronic devices are strictly prohibited for use in ADAP client enrollment.</p> <p>iii. Ensure that fax machines and CDPH/OA/ADAP fax/scanners used to upload and submit ADAP applications or receive ADAP correspondence, which may include confidential client information, are located in a secure area.</p>	<p>By the go-live date and to be maintained through the life of the contract.</p> <p>By the go-live date and to be maintained through the life of the contract.</p> <p>By the go-live date and to be maintained through the life of the contract.</p>	<p>Authorized Site Administrator and ADAP Enrollment Site Contact</p> <p>ADAP Enrollment Site Contact</p> <p>ADAP Enrollment Site Contact</p>	<p>All client enrollments must occur electronically via the EBM secure web-based enrollment system.</p> <p>Indicate compliance on the "Security Requirements, Protections, and Confidentiality Checklist", Exhibit F.</p> <p>Indicate compliance on the "Security Requirements, Protections, and Confidentiality Checklist", Exhibit F.</p>
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<p><b>A.5. Quality Requirements</b></p> <p>ADAP EWs and Enrollment Sites will be held to quality standards. EWs are required to maintain an ADAP enrollment performance level of at least 95 percent accuracy for ADAP eligibility documentation and enrollment. Enrollment Sites are required to maintain a minimum performance level of 90 percent. CDPH/OA/ADAP will conduct secondary review on all ADAP applications. Applications with errors will be considered defective and will count against the performance level of the ADAP EW/Enrollment Site. ADAP EW/Enrollment Site quality will be factored by dividing the number of defective applications by the total number of applications processed.</p>	<p>To be maintained through the life of the contract</p>	<p>ADAP Enrollment Site Contact and ADAP EW(s)</p>	<ul style="list-style-type: none"> <li>i. CDPH/OA/ADAP will monitor performance levels for the first year and provide performance reports and technical assistance.</li> <li>ii. If after the first quarter following the initial one year monitoring period, an ADAP EW(s)/Enrollment Site has an error rate that exceeds the quality standard, the Site Contact must submit a Corrective Action Plan to the ADAP Advisor for approval.</li> <li>ii. If an ADAP EW(s)/ Enrollment Site remains deficient for a second consecutive quarter, CDPH/OA/ADAP may suspend the Enrollment Worker for defective ADAP applications processed during the quarter.</li> </ul>
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			<p>v. If an ADAP EW(s)/Enrollment Site remains deficient for a third consecutive quarter, the EW(s)/Enrollment Site may be deactivated and will no longer be allowed to perform ADAP enrollment.</p>
<p><b>A.6. Conduct Requirements:</b></p> <p>ADAP EWs are required to conduct themselves with a high degree of professionalism and integrity. Site Contacts are required to ensure that no ADAP EW is employed by nor receives any financial compensation (including gifts or any other type of incentive) from a participating ADAP pharmacy and that no ADAP client enrollment is conducted at any participating ADAP pharmacy location.</p> <p>Additional examples of misconduct include, but are not limited to:</p>	<p>To be maintained through the life of the contract</p>	<p>ADAP Enrollment Site Contact and ADAP EW(s)</p>	<p>Notify the ADAP Advisor when instances of misconduct are identified.</p> <p>ADAP Site Contacts may be required to submit a Corrective Action Plan to the ADAP Advisor to address occurrences of misconduct.</p>

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<ul style="list-style-type: none"> <li>i. Knowingly and willfully enrolling clients with inaccurate or false documentation.*</li> <li>ii. Insubordination and/or non-compliance with CDPH/OA/ADAP staff requests.</li> <li>iii. Verbally abusive, use of derogatory language</li> <li>iv. Unresponsive to CDPH/OA/ADAP staff and/or client inquiries.</li> <li>v. Conducting unauthorized off-site ADAP enrollment.</li> <li>vi. Transporting ADAP files without having a transportation plan approved by CDPH/OA/ADAP staff.</li> </ul> <p>* Knowingly providing inaccurate or false documentation may be in violation of various Penal Code laws and may be subject to violations of the California False Claims Act, which prohibits any person or entity from knowingly making or using a false statement or document to obtain money, property, or services from the State. (See California Government Code section 12650 et. seq.)</p>			<p>EWs who engage in misconduct may be subject to temporary or permanent suspension of ADAP EW status.</p>
<p><b>A.7. Training and Guidelines Requirements:</b></p> <ul style="list-style-type: none"> <li>i. Ensure all new ADAP EWs have successfully completed new ADAP EW training provided by CDPH/OA/ADAP prior to enrolling or re-certifying ADAP clients.</li> </ul>	<p>To be maintained through the life of the contract.</p>	<p>ADAP Enrollment Site Contact</p>	<p>Report to the assigned ADAP Advisor, site staff who will be registering for required ADAP EW trainings.</p>

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<p>ii. Ensure compliance with the requirements written in the ADAP "California State ADAP Guidelines" and ADAP Management Memos.</p>	<p>To be maintained through the life of the contract.</p>	<p>ADAP Enrollment Site Contact and ADAP EW(s)</p>	
<p>iii. Ensure existing ADAP EWs maintain active status by participating in required annual recertifying ADAP EW trainings and/or other required ad hoc trainings provided by CDPH/OA/ADAP and/or the CDPH/OA/ADAP EBM in order to maintain ADAP certification to continue conducting ADAP enrollment functions.</p>	<p>To be maintained through the life of the contract.</p>	<p>ADAP Enrollment Site Contact</p>	<p>Notify ADAP EWs to recertify 30 days prior to the recertification end date.</p>
<p>iv. Ensure the ADAP Enrollment Site has representation/participation on all monthly CDPH/OA/ADAP EW calls.</p>	<p>Monthly through the life of the contract.</p>	<p>ADAP Enrollment Site Contact</p>	<p>Must ensure ADAP Enrollment Site participation for 90 percent of these calls. Must contact the ADAP Advisor, if unable to participate on a call to discuss the topics covered.</p>
<p><b>A.8.ADAP Enrollment Tracking Requirements:</b>          i. Ensure all ADAP EWs are identified and have a site specific ADAP EW ID number issued by the CDPH/OA/ADAP EBM.</p>	<p>To be maintained through the life of the contract.</p>	<p>ADAP Enrollment Site Contact</p>	<p>This site specific ADAP EW ID number may only be used by the ADAP EW to whom it is assigned for enrollment activities at this site.</p>

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<p>ii. Report any changes in site specific ADAP EWs' status (e.g., job duties, relocation, separation, etc.) that will alter the ADAP EW(s) ability to enroll clients, including the de-activation of any ADAP EW ID numbers.</p>	<p>Within 24 hours of the change</p>	<p>ADAP Enrollment Site Contact</p>	<p>Report addition/deletion/changes to ADAP EW(s) to the CDPH/OA/ADAP EBM and/or the assigned ADAP Advisor.</p>
<p><b>A.9. Transportation Plan Requirements:</b>  Ensure that no ADAP client eligibility documentation, records, files, etc., will be transported to or from the ADAP Enrollment Site without an approved transportation plan.</p>	<p>To be maintained through the life of the contract.</p>	<p>ADAP Enrollment Site Contact</p>	<p>See "Plan for Transporting Confidential ADAP Client Files", Exhibit G.</p>
<p>Exception to this restriction may be approved by CDPH/OA/ADAP for the following reasons:</p> <ul style="list-style-type: none"> <li>i. Client disability; or,</li> <li>ii. Remote distance requires ADAP EW to meet with client outside of the ADAP Enrollment Site; or,</li> <li>iii. The entire ADAP Enrollment Site is moving to a new address/location.</li> </ul> <p>Ensure that no ADAP client enrollment files will be transported until CDPH/OA/ADAP provides written approval of the site's specific transportation plan.</p>	<p>30 days prior to the need for transporting any ADAP client enrollment documents/files</p>	<p>ADAP Enrollment Site Contact</p>	<p>Submit a written request to the assigned ADAP Advisor which justifies the necessity for transporting ADAP client enrollment document/files. The request must also identify the specific procedures to be followed to safeguard the confidentiality of the ADAP client documents being transported, as well as who will be responsible/accountable for site's specific procedure(s). See "Plan for Transporting Confidential ADAP Client Files", Exhibit G.</p>
<p><b>A.10. Administrative Requirements</b></p> <ul style="list-style-type: none"> <li>i. Notify the assigned ADAP Advisor if the site wishes to change from an open site (one which serves any individual who wishes to enroll) to a closed site (one</li> </ul>	<p>Within at least 30 days notice to the requested change in status date.</p>	<p>ADAP Enrollment Site Contact</p>	<p>Written Request required (may be submitted by email) to ADAP Advisor.</p>

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which serves only agency-affiliated individuals) or vice versa.			
ii. Notify the assigned ADAP Advisor if the site plans to no longer provide ADAP enrollment services.	Within at least 60 days of the site deactivation date.	ADAP Enrollment Site Contact/Authorized Agency Administrator	Written Notification required (may be submitted by email) and submission of an ADAP transportation plan to the site's designated ADAP Advisor assuring the secure transfer of hard copy ADAP client files.
<b>A.11. Auditing Requirements</b>			
A. Facilitate CDPH/OA/ADAP site visit requests, including but not limited to receiving or providing required documentation/information as requested by the assigned ADAP Advisor. Act as liaison between the site, ADAP Advisor, ADAP EW(s), and LHJ Coordinator (if applicable) in activities related to the site visit.	As needed during normal working hours	ADAP Site Contact/Authorized Agency Administrator	Respond to written notifications and requests for information initiated by CDPH/OA/ADAP personnel.
B. Ensure that CDPH/OA/ADAP staff, authorized CDPH/OA/ADAP representatives and/or other state and federal agencies are granted access to all ADAP client eligibility files and any other documentation related to this contract agreement for audit purposes.	As needed during normal working hours	ADAP Site Contact/Authorized Agency Administrator	Respond to written and in-person requests for ADAP client files made by CDPH/OA/ADAP personnel.

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<p>C. Develop and submit required Corrective Action Plan (CAP) when required based on results of ADAP site visit/federal or state program audit.</p>	<p>As needed</p>	<p>ADAP Site Contact/Authorized Agency Administrator</p>	<p>CAP is to be submitted to the assigned ADAP Advisor by the timeframe identified in the letter or audit report indicating the CAP is required.</p>
<p>D. Maintain hard copy ADAP client files/records for four years (the current year, plus three prior years).</p>	<p>To be maintained through the life of the contract.</p>	<p>ADAP Enrollment Site Contact</p>	<p>As needed, records will be made available to view within the timeframe provided by the federal or state auditors.           At contract termination or expiration, Protected Health Information must be returned or retained in accordance with Exhibit D, "HIPAA Business Associate Addendum (CDPH HIPAA BAA 8-14)".</p>
<p><b>A.12. Grievance Requirements</b>           A. Ensure that ADAP clients are made aware of, and have access to, the CDPH/OA/ADAP Grievance procedures, and form as outlined in the California State ADAP Guidelines.</p>	<p><b>During in-person services</b>           Upon initial and annual re-enrollments of ADAP clients.</p>	<p>ADAP Enrollment Site Contact and/or ADAP EW(s)</p>	<p>CDPH/OA/ADAP will verify, via review of the ADAP Client Satisfaction Survey.</p>

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<p>B. Upon client request, assist ADAP clients in the completion and submission of a CDPH/OA/ADAP grievance form and related documents. Assistance may also include providing the mailing address and contact information for ADAP Advisors and/or other CDPH/OA/ADAP Contractors, and/or the submission of the completed grievance form and related documents to CDHP/OA/ADAP.</p>	<p>As needed</p>	<p>ADAP Enrollment Site Contact and/or ADAP EW(s)</p>	<p>Notify the assigned ADAP Advisor immediately if assistance is needed with the CDPH/OA/ADAP grievance process.</p>
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**Exhibit A, Attachment I**  
Definition of Terms

- i. AIDS Drug Assistance Program (ADAP) – Established in 1987 to help ensure that eligible, HIV positive uninsured and under-insured individuals have access to medication on the ADAP formulary through the Medication Program and Health Insurance Assistance Programs. ADAP provides medication, premium payment, and medical out of pocket payment assistance.
- ii. ADAP Advisor – Office of AIDS ADAP staff assigned to a Local Health Jurisdiction or ADAP Enrollment Site for monitoring and technical assistance.
- iii. ADAP Coordinator – Local Health Jurisdiction or other local agency staff designated to act as the primary county contact between the ADAP enrollment sites, OA, and ADAP contractors.
- iv. ADAP Enrollment Worker (EW) – ADAP Enrollment Site staff certified to provide ADAP enrollment services and access ADAP data.
- v. ADAP Enrollment Site Contact – Ensures the requirements of this contract agreement are adhered to, including, but not limited to the participation in monthly ADAP EW calls. Act as the primary contact for OA, the ADAP Coordinator within the Local Health Jurisdiction, and ADAP service contractors.
- vi. California Department of Public Health (CDPH) – is the lead agency in California providing detection, treatment, prevention and surveillance of public health issues.
- vii. Closed Site – ADAP enrollment site that only serves ADAP applicants/clients associated with their entity.
- viii. Community Based Organization (CBO) – Non-profit 501(3)(c) entities that operate within a single local community.
- ix. Fiscal Year (FY) – July 1 through June 30.
- x. Contractor – ADAP approved enrollment site managed by a non-profit organization to provide ADAP enrollment services.
- xi. Enrollment Benefits Manager (EBM) – Service contractor providing enrollment and benefits management support for ADAP.
- xii. Insurance Benefits Manager (IBM) – Service contractor that manages and processes health insurance premium payments for clients enrolled in both ADAP's Medication Program and Insurance Assistance Programs.
- xiii. Local Health Jurisdiction (LHJ) – One of 58 counties and three cities (Pasadena, Long Beach, and Berkeley) in the state of California.
- xiv. Medical Benefits Manager (MBM) – Service contractor that manages and processes outpatient medical out of pocket payments for clients enrolled in both ADAP's Medication Program the Office of AIDS Health Insurance Premium Payment Program.

**Exhibit A, Attachment I**  
Definition of Terms

- xv. Office of AIDS (OA) – Has lead responsibility for coordinating state programs, services, and activities relating to HIV/AIDS as designated by California Health and Safety Code Section 131019.
- xvi. OA Health Insurance Premium Payment (OA-HIPP) – Pays for private health insurance premiums and medical out of pocket costs for clients co-enrolled in ADAP's Medication Program.
- xvii. OA Medicare Part D Premium Payment Program – Pays for Medicare Part D premiums for clients co-enrolled in ADAP's Medication Program.
- xviii. Open Site – ADAP enrollment site that serves all ADAP applicants/clients.
- xix. Pharmacy Benefits Manager (PBM) – Service contractor administering the ADAP statewide pharmacy network and providing pharmaceutical services for ADAP clients



**Exhibit B**  
Budget Detail and Payment Provisions

- New ADAP Insurance Assistance Program Enrollments: \$100/per new enrollment
- ADAP bi-annual recertifications: \$20/per recertification
- ADAP annual re-enrollments: \$50/per re-enrollment
- Covered California open enrollment annual renewal documentation submissions for OA-HIPP/Covered California clients (may be required outside clients' enrollment or recertification cycle for new health plan year): \$50/per renewal
- ADAP Client Updates: \$20/per update related to income, residency, and health insurance/other third party payer coverage.

**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 the 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 FY 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 the Contractor to reflect the reduced amount.
- C. 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 termination or cancellation and any non-cancelable obligations incurred in support of this agreement.

**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.

**4. Timely Final Payment**

- A. Final payment shall be processed 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.
- B. CDPH/OA/ADAP shall make payment to the Contractor quarterly in arrears for costs associated with the provision of ADAP services at the ADAP Enrollment Site in the local health jurisdiction (LHJ), under this contract agreement. Payment to the Contractor will be contingent upon receipt and execution of this contract agreement and the provision of ADAP services (as verified by CDPH/OA/ADAP through the EBM data).
- C. This contract agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or the State Legislature, which may affect the provisions, terms, or funding of this contract agreement in any manner.

**Exhibit B**  
Budget Detail and Payment Provisions

**5. Recovery of Overpayments**

- A. Contractor agrees that payments 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 CDPH/OA/ADAP by CDPH/OA/ADAP withholding payments or withholding a portion of payment for services performed until the amount of overpayment has been resolved.

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.

Exhibit D  
HIPAA Business Associate Addendum

**I. Recitals**

- A. The underlying contract (Agreement), to which this HIPAA Business Associate Addendum is attached to and made a part of, has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in the Agreement, Contractor, here and after, is the Business Associate of CDPH acting on CDPH' behalf and 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 and PI. CDPH and Business Associate are each a party to the Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to the Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that CDPH must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

**II. Definitions**

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.

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HIPAA Business Associate Addendum

- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, 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.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

### III. Terms of Agreement

#### A. Permitted Uses and Disclosures of PHI by Business Associate

***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in the Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the

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minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
  - a. **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate provided that such 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.
  - b. **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.

**B. Prohibited Uses and Disclosures**

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CDPH and as permitted by 42 U.S.C. section 17935(d)(2).

**C. Responsibilities of Business Associate**

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by the Agreement or as required by law.
2. **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, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by the Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. 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 3, Security, below. Business Associate will provide CDPH with its current and updated policies.

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3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
- a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
  - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDPH under the Agreement;
  - c. 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 - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
  - d. 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 PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of the Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

**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 Addendum.

**E. Business Associate's Agents and Subcontractors.**

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of CDPH, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.
2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
  - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by CDPH; or

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- b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

**F. Availability of Information to CDPH and Individuals.** To provide access and information:

1. 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 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.
2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable CDPH to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from CDPH that was provided to CDPH by the Social Security Administration, upon request by CDPH, Business Associate shall provide CDPH with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

**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. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to CDPH and shall set forth the efforts it made to obtain the information.

**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 the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for CDPH as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for CDPH after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is

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later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

J. **Breaches and Security Incidents.** During the term of the Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

1. **Notice to CDPH.** (1) To notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to CDPH by the Social Security Administration. (2) To notify CDPH **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of the Agreement and this Addendum, or potential loss of confidential data affecting the Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the CDPH ITSD Service Desk. Notice shall be made using the "CDPH Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the CDPH Privacy Office website ([www.CDPH.ca.gov](http://www.CDPH.ca.gov)),

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "CDPH Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer:
  3. **Complete Report.** To provide a complete report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "CDPH Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If CDPH requests information in addition to that listed on the "CDPH Privacy Incident Report" form, Business Associate shall make reasonable efforts to

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provide CDPH with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "CDPH Privacy Incident Report" form. CDPH will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.

4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
  
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to CDPH in addition to Business Associate, Business Associate shall notify CDPH, and CDPH and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
  
6. **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 Addendum or the Agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH 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 0506 Sacramento, CA 95899-7377  Email: <a href="mailto:privacy@cdph.ca.gov">privacy@cdph.ca.gov</a> Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413  Email: <a href="mailto:cdphiso@cdph.ca.gov">cdphiso@cdph.ca.gov</a> Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

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- K. Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by CDPH of this Addendum, it shall take the following steps:
1. Provide an opportunity for CDPH to cure the breach or end the violation and terminate the Agreement if CDPH does not cure the breach or end the violation within the time specified by Business Associate; or
  2. Immediately terminate the Agreement if CDPH has breached a material term of the Addendum and cure is not possible.
- L. Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- M. Sanctions and/or Penalties.** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

#### IV. Obligations of CDPH

CDPH agrees to:

- A. Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that CDPH produces in accordance with 45 CFR section 164.520, as well as any changes to such notice.
- 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 section 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.

#### V. Audits, Inspection and Enforcement

- A.** From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with the Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDPH Privacy 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 Addendum, nor does CDPH':

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1. Failure to detect or
  2. 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' enforcement rights under the Agreement and this Addendum.
- B. If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify CDPH and provide CDPH with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

## VI. Termination

- A. **Term.** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the Agreement and shall terminate when all the PHI provided by CDPH to Business Associate, or created or received by Business Associate on behalf of CDPH, is destroyed or returned to CDPH, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. **Termination for Cause.** In accordance with 45 CFR section 164.504(e)(1)(ii), upon CDPH' knowledge of a material breach or violation of this Addendum by Business Associate, CDPH shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH; or
  2. Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. **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 the Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate the 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.
- D. **Effect of Termination.** Upon termination or expiration of the Agreement for any reason, Business Associate shall 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. If return or destruction is not feasible, Business Associate shall notify CDPH of the conditions that make the return or destruction infeasible, and CDPH and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, 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

Exhibit D  
HIPAA Business Associate Addendum

- A. *Disclaimer.*** CDPH makes no warranty or representation that compliance by Business Associate with this Addendum, 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 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 Addendum 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 HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH' request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CDPH may terminate the Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDPH pursuant to this Section; or
  2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding 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 the 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 Addendum 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 Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum 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 VI.D of this Addendum shall survive the termination or expiration of the Agreement.

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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.

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**Attachment A**  
Business Associate Data Security Requirements

**I. Personnel Controls**

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of CDPH, or access or disclose CDPH PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with CDPH PHI or PI must sign a confidentiality statement that includes, 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 or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for CDPH inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access CDPH PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

**II. Technical Security Controls**

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store CDPH PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- B. *Server Security.*** Servers containing unencrypted CDPH PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of CDPH PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain CDPH PHI or PI 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.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

Exhibit D  
HIPAA Business Associate Addendum

- E. **Antivirus software.** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. **Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. **User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords 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)
- H. **Data Destruction.** When no longer needed, all CDPH PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the CDPH Information Security Office.
- I. **System Timeout.** The system providing access to CDPH PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. **Warning Banners.** All systems providing access to CDPH PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. **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 PI, or which alters CDPH PHI or PI. 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 or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. **Access Controls.** The system providing access to CDPH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

Exhibit D  
HIPAA Business Associate Addendum

- M. *Transmission encryption.*** All data transmissions of CDPH PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting CDPH PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

### III. Audit Controls

- A. *System Security Review.*** All systems processing and/or storing CDPH PHI or PI 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 should include vulnerability scanning tools.
- B. *Log Reviews.*** All systems processing and/or storing CDPH PHI or PI 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 or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

### IV. Business Continuity / Disaster Recovery Controls

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PHI or PI 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 the Agreement for more than 24 hours.
- B. *Data Backup Plan.*** Contractor must have established documented procedures to backup CDPH PHI to maintain retrievable exact copies of CDPH PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore CDPH PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

### V. Paper Document Controls

- A. *Supervision of Data.*** CDPH PHI or PI 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 or PI 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 or PI is contained shall be escorted and CDPH PHI or PI shall be kept out of sight while visitors are in the area.

Exhibit D  
HIPAA Business Associate Addendum

- C. **Confidential Destruction.** CDPH PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. **Removal of Data.** CDPH PHI or PI must not be removed from the premises of the Contractor except with express written permission of CDPH.
- E. **Faxing.** Faxes containing CDPH PHI or PI 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 the fax.
- F. **Mailing.** Mailings of CDPH PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of CDPH PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of CDPH to use another method is obtained.



Karen L. Smith, MD, MPH  
Director and State Health Officer

State of California—Health and Human Services Agency  
California Department of Public Health

Exhibit E



EDMUND G. BROWN JR.  
Governor

MESSAGE FROM AIDS DRUG ASSISTANCE PROGRAM

NOTICE OF PRIVACY PRACTICES

Effective March 23, 2015

**THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.**

AIDS Drug Assistance Program (ADAP) must keep your health information private. ADAP receives information about you when you apply for benefits and when your pharmacist sends ADAP a bill for your care. ADAP also receives medical information on your treatment when ADAP approves your care. ADAP must give you this notice about the law and how ADAP can use and share your health information and what your rights are.

**HOW ADAP MAY USE AND SHARE INFORMATION ABOUT YOU**

ADAP may only use and share information about you, as required or permitted by law, in the operation of ADAP, Ryan White HIV/AIDS Program, Covered California, and Medi-Cal. This information includes things like your name, address, personal facts, medical history, Social Security Number and medical care given to you.

ADAP uses this information and shares it with others for the following reasons:

- **For payment:** ADAP and others that work with ADAP review, approve, and pay for pharmacy bills sent to ADAP for your medical care. When ADAP does this, ADAP shares information with the pharmacy benefits manager, pharmacists and doctors and others who bill ADAP for your care.
- **For health care operations:** ADAP may use your health records to check the quality of the prescription drug treatment you receive and to check your medical need to

receive restricted ADAP drugs. ADAP may also use this information in audits or fraud investigations, or for planning and managing the ADAP program.

- **Eligibility Determination:** ADAP may share your ADAP information with a Covered California Certified Enrollment Counselor, or with a benefits counselor, case manager, or OA-Health Insurance Premium Payment Program (OA-HIPP) enrollment worker who is an employee or contractor of a Health Insurance and Portability and Accountability Act (HIPAA)-covered county health department delivering HIV or AIDS health care services, for the purpose of enrolling you in and continuing your access to a Medi-Cal or Covered California health plan .

ADAP may also share your name and Social Security Number or individual taxpayer identification number with the Franchise Tax Board. This allows ADAP to verify your income from reported tax records and allows us to obtain required financial documentation if you do not have these records.

## **SOME OTHER WAYS ADAP MAY SHARE YOUR INFORMATION**

The law also allows ADAP to use or give out information ADAP has about you for the following reasons:

- To call or write to you about your benefits with ADAP.
- When required by state or federal law.
- To agencies that oversee audits or investigations for purposes directly related to ADAP.
- In appeals of decisions about health care claims paid or denied by ADAP.
- To the federal government when it is checking on how ADAP is meeting privacy laws.
- To other government agencies that give public benefits such as Medi-Cal, under specified conditions permitted by law.

ADAP may give out health information about you to organizations that help run ADAP's program. If ADAP does, ADAP will make sure that it protects the privacy of your information ADAP shares with them.

Some state laws limit sharing the information listed above. For example, there are special laws, which protect information about HIV/AIDS status, mental health treatment, developmental disabilities, and drug and alcohol abuse care. ADAP will obey these laws.

## **WHEN WRITTEN PERMISSION IS NEEDED**

If ADAP wants to use or give out personal and health information about you for any reason that is not listed above, ADAP must ask your permission in writing. You may take back your written permission at any time, except if we have already acted because of your permission.

## WHAT ARE YOUR PRIVACY RIGHTS UNDER THE LAW?

You have the right to:

- Ask ADAP not to use or share your personal health care information in the ways listed above. However, ADAP may not be able to honor your request.
- Ask ADAP to contact you in writing only or at a different address, post office box, or by telephone. ADAP will accept reasonable requests if needed for your safety.
- To see and get a copy of your ADAP information. You may have someone else see and get a copy of your ADAP information. ADAP has information about your eligibility, your health care bills, and some medical records that ADAP uses to allow or manage your health care services. You will need to pay a fee for ADAP to copy and mail the records. ADAP may keep you from seeing all or parts of your records when the law allows. If ADAP does, ADAP will give you information on how to appeal our decision.
- To change the records if you believe some information ADAP has about you is wrong. ADAP may deny your request if the information was not made or kept by ADAP, or the information is already correct and complete. If your request is denied, you may write a letter disagreeing with ADAP's decision and your letter will be kept with your records.

**\*\*\*\*IMPORTANT\*\*\*\***

**ADAP DOES NOT HAVE COMPLETE COPIES OF YOUR MEDICAL RECORDS. IF YOU WANT TO LOOK AT, GET A COPY OF, OR CHANGE YOUR MEDICAL RECORDS, PLEASE CONTACT YOUR DOCTOR, CLINIC, OR HEALTH CARE PLAN.**

- You have the right to ask for a list of the times when ADAP has shared your health information after April 14, 2003. The list will tell you what information ADAP shared, with whom, when, and for what reasons. The list will not have when ADAP gave information to you, when ADAP had your permission, or when ADAP shared it for treatment, payment, or health care operations.
- You have a right to receive a written copy of this Notice of Privacy Practices when you request it. You can also find this notice on our website at <http://www.cdph.ca.gov/programs/aids/Pages/tOAADAPindiv.aspx>

## HOW DO YOU CONTACT ADAP TO USE YOUR RIGHTS?

Please call or write ADAP if you want to receive the form you will need to exercise your privacy rights.

**ADAP Health Insurance Portability  
and Accountability Act Coordinator**

c/o ADAP

Department of Public Health  
MS 7700, P.O. Box 997426  
Sacramento, CA 95899-7426  
(916) 449-5882

You may also contact your ADAP enrollment worker for the forms necessary to exercise your rights.

If you believe that ADAP has not protected your privacy, you may file a complaint by calling or writing to:

<p><b>Privacy Officer</b> California Department of Public Health Office of Legal Services Privacy Office, 1415 L Street, Suite 500 Sacramento, CA 95814 (916) 440-7671</p>
--

## **COMPLAINTS**

You may also call or write the Secretary of the United States (U.S.), Department of Health and Human Services, Office for Civil Rights, 90 7<sup>th</sup> Street, Suite 4-100, San Francisco, CA 94103, telephone (800) 368-1019 or you may call the U.S. Office for Rights at 866-OCR-PRIV, 866-627-7748, or 866-788-4989 TTY/TDD.

**ADAP cannot take away your health care benefits or retaliate in any way if you file a complaint or use any of the privacy rights in this notice.**

**If you have any questions about this notice, and want more information please contact the California Department of Public Health, Privacy Officer, at the address and telephone number listed above.**

## **CHANGES TO NOTICE OF PRIVACY PRACTICES**

ADAP must obey the rules of this notice. ADAP has the right to make changes in the ADAP privacy rules. If ADAP does make any changes, ADAP will correct this notice and give it to you right away.

To get a copy of this notice in other languages, Braille, large print, audiocassette or computer disk, please call or write to ADAP at the phone number or address listed.

## Exhibit F

### Security Requirements, Protections, and Confidentiality Checklist

Site Name: \_\_\_\_\_ Site Number: \_\_\_\_\_

The Contractor shall complete and return this checklist with the signed copy of the contract agreement. To complete this checklist, the authorized agency administrator or representative attests by checking the boxes adjacent to the statement and signing this checklist that the ADAP Enrollment Site meets, and shall continue to meet throughout the life of the contract (July 1, 2016 – June 30, 2019), the requirements as identified in the Scope of Work which includes those identified below:

1.	The Contractor has reviewed and attests that the contracting agency or organization meets the requirements as written in the "Nondiscrimination Clause (OCP-1)" STD 17A form and has a process in place to deal with discrimination complaints.	✓
2.	The Contractor can ensure the administrative, physical and technical safeguards of protected health information as required in the CDPH HIPAA BAA 8-14, HIPAA Business Associate Addendum.	✓
2.a.	<p><i>Breaches of confidential client information must be immediately reported to CDPH/OA/ADAP. In the space below, please identify the process (and individual/s) your agency or organization has in place to report breaches of ADAP clients' protected health or personal information.</i></p> <p><i>All suspected breaches of confidential client information are reported to the County Privacy Officer. The Inyo County Privacy officer is responsible for reporting breaches to ADAP within the required timeframe.</i></p>	
3.	The ADAP Notice of Privacy Practices is posted in an area at the ADAP Enrollment Site that is accessible and visible to ADAP applicants/clients.	✓
4.	The Contractor has internet access and scanning and uploading capabilities to allow for the creation of electronic ADAP client files within the designated ADAP's Enrollment Benefits Management secure web-based enrollment system.	✓
5.	The Contractor has desktop computers with internet access available for all site personnel (shared or individual) who will be performing ADAP enrollment services.	✓
6.	The Contractor has fax machine/s and scanner/s used to transmit and/or received ADAP client enrollment information/documentation located in a secure area at this ADAP Enrollment Site.	✓

*All of the requirements listed above must be met in order to become an ADAP Enrollment Site.*

Jean Turner  
 Print Name of Authorized Agency Representative

Health and Human Services Director  
 Title

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

**Plan for Transporting  
Sample – Confidential ADAP Client Files  
POLICY & PROCEDURE  
[Site Name]**

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<b>SUBJECT:</b>	Security Policy for Transporting AIDS Drug Assistance Program (ADAP) Enrollment Forms and Documentation	<b>SITE NUMBER:</b>	[XXXX]
<b>REQUESTED BY:</b>	_____	<b>INITIAL REQUEST:</b>	<input type="checkbox"/>
	[Printed Name]	<b>REVISED REQUEST:</b>	<input type="checkbox"/>
	_____	<b>EFFECTIVE DATE:</b>	_____
	[Title]	<b>REVISION DATE:</b>	_____

---

**Background:** [Name of Enrollment Site], AIDS DRUG ASSISTANCE PROGRAM (ADAP), helps to ensure that HIV positive uninsured and under-insured individuals have access to pharmaceutical therapies. The goal of ADAP is to make available, in an effective and timely manner to people living with HIV, drug treatments that can increase the duration and quality of life. In order to serve those in need, it is sometimes necessary to assist individuals with the ADAP eligibility paperwork at an offsite location.

**Purpose:** The purpose of this policy and procedure is to establish guidelines for transporting ADAP enrollment forms and other necessary ADAP client documentation to and from [Name of Enrollment Site], in the event that it is deemed necessary to do the ADAP eligibility paperwork at a location other than at the [Name of Enrollment Site], facility located at [Address of Enrollment Site].

**Policy:** It is the policy of [Name of Enrollment Site], ADAP, to ensure that any transportation of ADAP documentation will be safe, secured and implemented in accordance with [Name of Enrollment Site], guidelines for safeguarding the confidentiality of protected health information. ADAP Enrollment Workers (EWs) will implement reasonable and appropriate administrative, technical, and physical measures to safeguard protected health information from any intentional or unintentional use or disclosure that might violate County, State or Federal privacy regulations, and HIV confidentiality and disclosure laws.

**References:** [Name of Enrollment Site]

[Name of HIPPA document(s) used by site]

[Name of Enrollment Site, Privacy Incident Report]

**Procedure:**

- I. Original client paper records and ADAP enrollment documents **will not** be transported unless necessary to provide services to a client.
- II. It shall be at the discretion of the EWs to determine if it is necessary to transport documents. If deemed necessary:
  - A. An "ADAP Checkout Log" will be completed and maintained by the ADAP Site Contact that includes the ADAP client's name, ADAP documentation transported, date removed, date returned and the EW's name
  - B. All ADAP documents that are transported to an off-site location will be noted on the "ADAP Checkout Log"
  - C. All documentation and records will be returned as quickly as possible
  - D. The "ADAP Checkout Log" will be stored in a confidential and secure location
- III. The safety and return of the documents will be the responsibility of the person who removed them.
- IV. EWs will make every effort to maintain the safety and security of ADAP records when transporting them to or from [Name of Enrollment Site], and completing them at the offsite location.
  - A. ADAP documents will be transported in a folder, inside of a locked brief case, and locked in the vehicle trunk.
  - B. Once ADAP documents have been transported back to the [Name of Enrollment Site], EWs will immediately account for all client documentation and assure that it is returned to its proper, secure destination.
  - C. The use of laptops or other electronic media device to transport documentation is not permitted.

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Signature of Site Contact / Agency Administrator

---

Date Signed

**NONDISCRIMINATION CLAUSE (OCP-1)**

STD. 17A (REV. 9-2000)\_CDPH

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Contractor and subcontractors shall ensure 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 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs. tit. 2, § 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, § 12990 (a-f), are incorporated into this contract by reference and made a part hereof as if set forth in full (Cal. Code Regs. tit. 2, §7285.0 et seq.). 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.
  
2. This Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under contract.

**Agreement by Employee/Contractor to Comply with Confidentiality Requirements**

*Summary of Statutes Pertaining to Confidential Public Health Records and Penalties for Disclosure*

All HIV/AIDS case reports and any information collected or maintained in the course of surveillance-related activities that may directly or indirectly identify an individual are considered *confidential public health record(s)* under California Health and Safety Code (HSC), Section 121035(c) and must be handled with the utmost confidentiality. Furthermore, HSC §121025(a) prohibits the disclosure of HIV/AIDS-related public health records that contain any personally identifying information to any third party, unless authorized by law for public health purposes, or by the written consent of the individual identified in the record or his/her guardian/conservator. Except as permitted by law, any person who negligently discloses information contained in a confidential public health record to a third party is subject to a civil penalty of up to \$5,000 plus court costs, as provided in HSC §121025(e)(1). Any person who willfully or maliciously discloses the content of a public health record, except as authorized by law, is subject to a civil penalty of \$5,000-\$25,000 plus court costs as provided by HSC §121025(e)(2). Any willful, malicious, or negligent disclosure of information contained in a public health record in violation of state law that results in economic, bodily, or psychological harm to the person named in the record is a misdemeanor, punishable by imprisonment for a period of up to one year and/or a fine of up to \$25,000 plus court costs (HSC §121025(e)(3)). Any person who is guilty of a confidentiality infringement of the foregoing type may be sued by the injured party and shall be personally liable for all actual damages incurred for economic, bodily, or psychological harm as a result of the breach (HSC §121025(e)(4)). Each disclosure in violation of California law is a separate, actionable offense (HSC §121025(e)(5)).

Because an assurance of case confidentiality is the foremost concern of the California Department of Public Health, Office of AIDS (CDPH/OA), any actual or potential breach of confidentiality shall be immediately reported. In the event of any suspected breach, staff shall immediately notify the director or supervisor of the local health department's HIV/AIDS surveillance unit who in turn shall notify the CDPH/OA Surveillance Section Chief or designee. CDPH/OA, in conjunction with the local health department and the local health officer shall promptly investigate the suspected breach. Any evidence of an actual breach shall be reported to the law enforcement agency that has jurisdiction.

*Employee Confidentiality Pledge*

I recognize that in carrying out my assigned duties, I may obtain access to private information about persons diagnosed with HIV or AIDS that was provided under an assurance of confidentiality. I understand that I am prohibited from disclosing or otherwise releasing any personally identifying information, either directly or indirectly, about any individual named in any HIV/AIDS confidential public health record. Should I be responsible for any breach of confidentiality, I understand that civil and/or criminal penalties may be brought against me. I acknowledge that my responsibility to ensure the privacy of protected health information contained in any electronic records, paper documents, or verbal communications to which I may gain access shall not expire, even after my employment or affiliation with the Department has terminated.

By my signature, I acknowledge that I have read, understand, and agree to comply with the terms and conditions above.

\_\_\_\_\_  
Employee name (print)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor name (print)

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Employer

**PLEASE RETAIN A COPY OF THIS DOCUMENT FOR YOUR RECORDS.**

CCC-307

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

## **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

## Darfur Contracting Act

Pursuant to Public Contract Code (PCC) sections 10475-10481, the Darfur Contracting Act's intent is to preclude State agencies from contracting with scrutinized companies that do business in the African nation of Sudan. A scrutinized company is a company doing specified types of business in Sudan as defined in PCC section 10476. Scrutinized companies are ineligible to, and cannot, contract with a State agency for goods or services (PCC section 10477(a)) unless obtaining permission from the Department of General Services according to the criteria set forth in PCC section 10477(b).

Therefore, to be eligible to contract with the California Department of Public Health, please initial one of the following three paragraphs and complete the certification below:

1. \_\_\_\_\_ We do not currently have, or we have not had within the previous  
 Initials three years, business activities or other operations outside of the United States.

OR

2. \_\_\_\_\_ We are a scrutinized company as defined in Public Contract Code  
 Initials section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b) or submit a contract/purchase order. A copy of the written permission from DGS is included with our bid, proposal or contract/purchase order.

OR

3. \_\_\_\_\_ We currently have, or we have had within the previous three years,  
 Initials business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind this company to the clause listed above. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>



**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only:  
AGENDA NUMBER

20

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

**FROM:** Health & Human Services-Public Health

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Standard Agreement between the County of Inyo and California Department of Public Health for HIV/AIDS care and support services to individuals living with HIV/AIDS or at risk of HIV infection.

**DEPARTMENTAL RECOMMENDATION:**

Request your Board ratify and approve the Standard Agreement, Number 15-11056 between the County of Inyo and Department of Public Health for the provision of HIV/AIDS care and support services to individuals living with HIV/AIDS or at risk of HIV infection for a total grant amount of \$243,443 from the period of April 1 2016, through March 31, 2019, contingent upon Board's approval of future years budgets and authorize the Chairperson to sign the Standard Agreement, Certification Regarding Lobbying, Contractor Certification and the Darfur Contracting Act Certification.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

This request is coming to the Board late because the State provided contract documents on June 30<sup>th</sup>, 2016. Staff started routing the contract for your approval immediately upon receipt.

The HIV/AIDS care and support program is designed to assure the availability of comprehensive social and medical services and to assist in the development of a support network for the HIV positive population in Inyo County. Specific responsibilities of Inyo County Health and Human Services staff include functioning as the Fiscal Agent, provider of case management services, outreach to potential clients, and collaboration with other agencies in development of client services. These funds will be available for personnel, operating expenses and direct services.

This request provides the following documents and budgetary forms so that we may continue to provide services to the CDPH, Office of AIDS; 1) Standard Agreement (STD 213A); 2) Exhibits A-I; 3) Budget Detail; 4) CCC-307 Contractor Certification; 5) Darfur Contracting Act Certification.

**ALTERNATIVES:**

Non-acceptance of this funding would mean that Inyo County would not be able to provide services to this population.

**OTHER AGENCY INVOLVEMENT:**

Bi-annual meetings are often attended by members of local agencies including: Hospice of Owens Valley, Northern Inyo Hospital, Toiyabe Indian Health Clinics, Methodist Church, as well as clients, families, and other members of the community.

**FINANCING:**

100% Federal Funding, but is passed through the State. This revenue is budgeted in the CARES Grant (641216) for the twelve month portion of the grant. No County General Funds.

<b>APPROVALS</b>	
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>7/15/16</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>7/19/2016</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)

Jean Turner

Date: 7-20-16

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

REGISTRATION NUMBER	AGREEMENT NUMBER 15-11056
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1. This Agreement is entered into between the State Agency and the Contractor named below:

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

CONTRACTOR'S NAME (Also referred to as Contractor)  
 County of Inyo

2. The term of this Agreement is: April 1, 2016 through March 31, 2019

3. The maximum amount of this Agreement is: \$ 243,443  
 Two hundred forty three thousand, four hundred forty three 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	18 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit B, Attachment I – Budget (Year 1- Year 3)	2 pages
Exhibit C * – General Terms and Conditions	<u>GTC 610</u>
Exhibit D – Special Terms and Conditions	16 pages
Exhibit E – Additional Provisions	2 pages
Exhibit F – Federal Terms and Conditions	11 pages
Exhibit G – Contract Equipment Purchased with CDPH Funds	2 pages
Exhibit H – Inventory/Disposition of CDPH Funded Equipment	2 pages
Exhibit I – Information Privacy and Security Requirements	9 pages
Exhibit J – Contractor's Release	1 page
Exhibit K – HIV/AIDS Confidentiality Agreement	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.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

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

<b>CONTRACTOR</b>		<b>California Department of          General Services Use Only</b>
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 South Street, Bishop, CA 93514		
<b>STATE OF CALIFORNIA</b>		
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 1800, PO Box 997377 Sacramento, CA 95899-7377		

Exempt per: OA Budget Act 2015  
 AB 93, Chapter 10

**Exhibit A**  
**HIV Care Program and Minority AIDS Initiative**  
**Scope of Work**

**1. Service Overview**

The goals of the California Department of Public Health (CDPH), Office of AIDS (OA) are: (1) to minimize new Human Immunodeficiency Virus (HIV) infections; (2) to maximize the number of people with HIV infection who access appropriate care, treatment, support, and prevention services, and (3) reduce HIV/Acquired Immune Deficiency Syndrome (AIDS)-related health disparities. These goals are consistent with the goals of the National HIV/AIDS Strategy. The services required by the HIV Care Program (HCP) and Minority AIDS Initiative (MAI) Scope of Work (SOW) are consistent with, and are designed to support, these goals.

OA utilizes federal Health Resources Services Administration (HRSA) funds to provide support for HIV/AIDS services in local areas. Federal HRSA funds include Part B and MAI funding. HCP and MAI funds are allocated to Contractors based on a formula. The corresponding Catalog of Federal Domestic Assistance (CFDA) Number for Ryan White Part B HIV Care Grant Program is 93.917. More information on the CFDA number is available at [www.cfda.gov](http://www.cfda.gov).

Through this agreement, the Contractor agrees to administer (a) **HCP Core Medical and Support Services** and, if applicable, (b) **MAI Outreach and Treatment Education Services**.

- A. The Contractor agrees to administer HCP and to ensure the provision of the HIV care services as described in this SOW. The Contractor may provide direct client services exclusively or subcontract all or part of the client services. The Contractor ensures that, if all or part of the client services is subcontracted to other client service providers, all services provided by the subcontracted agency will be in accordance with HCP.
- B. If funded, the Contractor agrees to administer the MAI outreach and treatment education services focused on providing access to, and engagement in, medical care for HIV-positive persons of color, including access to AIDS Drug Assistance Program (ADAP), Medi-Cal, or other appropriate drug assistance program. The Contractor may provide direct client services exclusively or subcontract all or part of the client services. The Contractor ensures that, if all or parts of the client services are subcontracted to other client service providers, all services provided by the subcontracted agency will be in accordance with MAI.

**2. Service Location**

The services shall be performed at applicable locations within the County of Inyo.

**3. Service Hours**

The services shall be provided during regular business hours, Monday through Friday, except official holidays.

**Exhibit A  
HIV Care Program and Minority AIDS Initiative  
Scope of Work**

**4. Project Representatives**

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

<b>California Department of Public Health</b> Office of AIDS Care Operations Unit Brian Hancock, Staff Services Manager I Telephone: (916) 449-5950 Fax: (916) 449-5959 Email: Brian.Hancock@cdph.ca.gov	<b>County of Inyo</b> Anna Scott, HHS Deputy Director Telephone: (760) 873-7868 Fax: (760) 873-7800 Email: ascott@inyocounty.us
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B. Direct all inquiries to:

<b>California Department of Public Health</b> Office of AIDS Care Operations Unit Attention: Jackie Wilson, Associate Governmental Program Analyst 1616 Capitol Avenue P.O. Box 997426, MS 7700 Sacramento, CA 95899-7426  Telephone: (916) 319-9166 Fax: (916) 449-5959 Email: Jackie.wilson@cdph.ca.gov	<b>County of Inyo</b>  Attention: Anna Scott, HHS Deputy Director 207 A South Street Bishop, CA 93514  Telephone: (760) 873-7868 Fax: (760) 873-7800 Email: ascott@inyocounty.us
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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

**5. Services to be Performed**

**Administrative and Fiscal Requirements**

**A. HCP and MAI Contractors and Subcontractors**

The following are administrative and fiscal requirements for HCP and MAI Contractors and subcontractors.

1. Ensure compliance with the federal HRSA Ryan White HIV/AIDS Program grant requirements, policies, and National Monitoring Standards; and OA's HCP and MAI Program and Budget Guidance documents, OA Management Memorandums, AIDS Regional Information and Evaluation System (ARIES) Policy Notices, and other program guidelines issued by OA.

**Exhibit A  
HIV Care Program and Minority AIDS Initiative  
Scope of Work**

2. Expend at least 95 percent of allocation each contract year per HCP and MAI Management Memorandum 15-08 (see [www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2015-08%20-%2095%20Percent%20Spend%20Down.pdf](http://www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2015-08%20-%2095%20Percent%20Spend%20Down.pdf)). Contractors that project to spend less than 95 percent of their overall allocation are required to:
  - a. Submit a reduced HCP/MAI Budget Form no later than September 30<sup>th</sup> (6 months after the contract year begins) to the HCP/MAI Advisor; and
  - b. Sign an amendment to return funds for redistribution to other contractors.
3. Ensure that administrative costs in HCP and MAI contract budgets do not exceed 10 percent of the total annual contract amount based on Title XXVI of the Public Health Service Act, per HRSA Policy Clarification Notice #15-01 (see [www.hab.hrsa.gov/affordablecareact/pcn1501.pdf](http://www.hab.hrsa.gov/affordablecareact/pcn1501.pdf) and HCP and MAI Management Memorandum 15-05 [www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2015-05.pdf](http://www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2015-05.pdf)).

Administrative (non-direct service) functions include:

- a. Routine contract administration and monitoring activities, including the preparation of applications for these funds, the receipt and disbursement of program funds, the development and establishment of reimbursement and accounting systems, the preparation of routine programmatic and financial reports, and compliance with contract conditions and audit requirements;
- b. All activities associated with the Contractor's subcontract award procedures, including the development of request for proposals, contract proposal review activities, negotiation and awarding of subcontracts, grievance process, monitoring of subcontracts through telephone consultation or onsite visits, reporting on subcontracts and funding reallocation activities.

**Please Note:** The 10.00% administrative cap applies to total budget amount for both the Contractor and subcontract(s) combined.

4. Administer HCP funds appropriately, maintain records and invoices using standard accounting practices, coordinate federal and state data reporting, and arrange for fiscal audits.
5. Provide budgets and supporting documentation with sufficient detail to document that they do not include unallowable costs or activities.
6. Ensure employee duties in approved HCP and MAI budgets match invoices submitted to OA.

**Exhibit A**  
**HIV Care Program and Minority AIDS Initiative**  
**Scope of Work**

7. Ensure that budgets and expenses conform to federal costs principles. Staff must adhere to Office of Management and Budget (OMB) Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Guidance) (see <https://federalregister.gov/a/2013-30465>).
8. Ensure compliance contract Anti-Kickback Statute conditions (42 USC 1320a 7b(b)). Processes and standards must be in place to avoid fraud, waste, and abuse (mismanagement) of HCP funds.
9. Prohibit employees from soliciting or receiving payment in kind or cash for the purchase, lease, ordering, or recommending the purchase, lease, or ordering, of any goods, facility services, or items.
10. Have documentation as required by the Compliance Plan or employee conduct standards that prohibit employees from receiving payments in kind or cash from suppliers and contractors of goods or services.
11. Maintain a current, complete and accurate asset inventory list and depreciation schedule purchased with HCP funds.
12. Ensure no funds are carried over into subsequent contract years.
13. Provide assurances to OA prior to subcontracting with for-profit entities that said entities meet the requirements outlined in HAB's Policy Notice 11-02 (<http://hab.hrsa.gov/manageyourgrant/pinspals/habpl1102.pdf>).
14. Ensure funds are not used on prohibited activities (see <http://hab.hrsa.gov/manageyourgrant/granteebasics.html> and OA's HCP and MAI Program and Budget Guidance documents [www.cdph.ca.gov/programs/aids/Pages/TOACareProviders.aspx](http://www.cdph.ca.gov/programs/aids/Pages/TOACareProviders.aspx)).
15. Ensure funds are only used to supplement and not supplant existing federal, state, or local funding for HIV testing, Health Insurance Premiums, and cost sharing.
16. Ensure funds are not utilized to make payments for any item or service to the extent payment has been made, or can reasonably be expected to be made, with respect to that item or service:
  - a. Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or
  - b. By an entity that provides health services on a prepaid basis.
17. Ensure HCP funds are not used to:

**Exhibit A**  
**HIV Care Program and Minority AIDS Initiative**  
**Scope of Work**

- a. Pay costs associated with the creation, capitalization, or administration of a liability risk pool (other than those costs paid on behalf of individuals as part of premium contributions to existing liability risk pools), or to pay any amount expended by a State under Title XIX of the Social Security Act.
  - b. Pay for any item or service that can reasonably be expected to be paid under any State Compensation Program, insurance policy, or any Federal or State Health Benefits Program (except for programs related to Indian Health Service and Veterans Health Administration).
  - c. Develop materials, designed to promote or encourage, directly or indirectly, intravenous drug use or sexual activity.
  - d. Purchase or improve (other than minor remodeling) any building or other facility.
  - e. Purchase vehicles without the written approval of OA and HRSA Grants Management Officer (GMO).
  - f. Pay for automobile parts, repairs, or maintenance, pet care or supplies, funeral expenses, construction, etc. as described in HIV/AIDS Branch (HAB) Policy Notice 10-02 regarding Eligible Individuals and Allowable Uses of Funds for Discretely Defined Categories of Services ([www.hab.hrsa.gov/manageyourgrant/pinspals/eligible1002.html](http://www.hab.hrsa.gov/manageyourgrant/pinspals/eligible1002.html)).
18. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Ryan White money, the Contractor must clearly state the percentage of the total costs of the program or project which will be financed with Ryan White money, the dollar amount of Ryan White funds for the project or program, and percentage and a dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.
  19. Participate in, and allow staff (as appropriate) to participate in, any state-mandated meetings, trainings, webinars, teleconferences, workshops, and/or other conferences to be determined.
  20. Ensure responses to OA's drills or request for information are accurate, complete and received on or before the required response date.
  21. Commit to submitting data in an accurate and timely fashion, including committing to full participation in any evaluation or research component.
  22. Cooperate with the Centers for Disease Control and Prevention's (CDC) Medical Monitoring Project as requested.

**Exhibit A  
HIV Care Program and Minority AIDS Initiative  
Scope of Work**

23. Cooperate with any State or Federal investigation or audit regarding the Ryan White program funds.
24. Ensure the protection of the client's privacy and confidentiality at all times as required by California and federal laws (including, without limitation, Health and Safety Code sections 120980, 121022 and 121025). Contractor and its employees (and the employees of any subcontractor as well) who will have access to confidential public health information shall be required to sign Agreement by Employee/Contractor to Comply with Confidentiality Requirements (Form CDPH 8689) each year prior to being given access to the confidential information, as required by Health and Safety Code section 121022(f) (See Exhibit K attached to this contract). In addition, federal law requires that individuals have a right of access, to inspect, and obtain a copy of their Protected Health Information (PHI) in a designated record set, for as long as the health information is maintained by a CDPH health plan, CDPH providers, or business associates. There are limited exceptions to an individual's right of access PHI (45 C.F. R. s 164.524).
25. In addition to the procedures set forth in the Information Privacy and Security Requirements (See Exhibit I attached to this contract), Contractors must ensure that all computers, including mobile devices, are equipped with encryption software, even if the Contractor or their subcontracted agencies do not store confidential information on equipment.

The following applies to HCP Contractors and Subcontractors only:

26. Ensure that client service providers who provide Medi-Cal/Denti-Cal reimbursable services are certified as providers for purposes of Medi-Cal/Denti-Cal billing (see [www.medi-cal.ca.gov](http://www.medi-cal.ca.gov)) and have the ability to bill other third-party payers for covered services, or able to document efforts under way to obtain such certification.
27. Assure billing and collection from third party payers, including Medi-Cal, Denti-Cal, and Medicare, which should be invoiced first, as appropriate, to ensure Ryan White is the payer of last resort.
28. Maximize and monitor third party reimbursements. Establish and maintain medical practice management systems for billing. Report program income documented by charges, collections, and adjustment reports or by the application of a revenue allocation formula.
29. Establish a process for obtaining and documenting client charges and payments through an accounting system manually, electronically, or by a revenue allocation formula. Staff must be aware of and consistently follow the process.

**Exhibit A**  
**HIV Care Program and Minority AIDS Initiative**  
**Scope of Work**

30. Have a written policy that discourages the use of two charge masters, one for self-pay clients and a higher one for insurance companies.

**B. HCP and MAI Contractors Risk Assessment of Subcontractors**

The following are risk assessment requirements for HCP and MAI Contractors that have subcontractors.

1. Ensure that any subcontracted agencies have the organizational and administrative capabilities to support the program services and activities. The Contractor is responsible for quality assurance and utilization review activities for subcontracted HIV care services.
2. Ensure that any subcontracted agencies have appropriate facilities and resources, including an adequate physical plant and appropriate supplies and equipment available for the provision of services and practical support functions.
3. Ensure the HCP funds do not comprise the majority of any subcontracted agency's total budget. HCP funds are intended to provide additional funding to those areas negatively affected by HIV disease and cannot be used to supplant local HIV-related budgets.
4. Comply with the State's timeline to submit to the State a list identifying the names and budget overview of all service provision and subcontracted agencies and total funds available to each Client Service Provider. OA's HIV Care Section will provide the required forms to complete the budget overview and all service provision information. These forms are located on the OA website at [www.cdph.ca.gov/programs/aids/Pages/HCPForms.aspx](http://www.cdph.ca.gov/programs/aids/Pages/HCPForms.aspx).
5. Ensure subcontractor agreement(s) comply with all federal and state statutes, regulations, terms, and conditions. Subcontractor agreements shall comply with OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Guidance) (see <https://federalregister.gov/a/2013-30465>).
6. Maintain a file with signed subcontractor agreement(s), including performance start and end dates, subcontractor Data Universal Number System (DUNS) Number, assurances, and/or certification that specify unallowable activities.
7. Ensure that subcontractor budgets and expenditures do not include unallowable costs or activities.
8. Ensure all approved subcontracted agency invoices are paid within 30 days of receipt.
9. Conduct the following monitoring activities:

**Exhibit A  
HIV Care Program and Minority AIDS Initiative  
Scope of Work**

- a. Conduct site visits and document/monitor the activities of subcontracted agencies to ensure contractual compliance not less than once every year. For all deficiencies cited in the contractor's monitoring report, develop a corrective plan, submit to the State for approval, and implement the plan.
- b. Provide any necessary assistance to the State in carrying out State monitoring activities and inspection rights for both contractors and subcontracted agencies, as provided in this agreement.
- c. Make available to authorized State and/or federal representatives all records, financial and programmatic reports, materials, data information, and appropriate staff required for monitoring, audit, or inspection activities.
- d. For all deficiencies cited in the State's monitoring report, develop a corrective plan, submit to the State for approval, and implement the plan. Provide the corrective plan to the State within 30 days of receipt of the monitoring report.

The following applies to HCP Contractors only:

10. Monitor tracking system of the receipt and use of third party payments by subcontractors.

**Service Requirements**

**A. HCP and MAI Contractors and Subcontractors**

The following are service requirements for HCP and MAI Contractors and subcontractors.

1. Ensure that services provided under this contract are in accordance with the service category definitions, national monitoring standards, and policy notices issued by HRSA, HAB (see <http://hab.hrsa.gov/manageyourgrant/granteebasics.html>) and OA's *HCP and MAI Program Guidance* (see [www.cdph.ca.gov/programs/aids/Pages/TOACareProviders.aspx](http://www.cdph.ca.gov/programs/aids/Pages/TOACareProviders.aspx)).
2. Ensure HIV care services are provided in a setting that is accessible to low-income individuals with HIV disease. Facilities must also be accessible for hearing-, vision-, and mobility-impaired persons in accordance with the federal Americans with Disabilities Act (ADA).
3. Take steps to ensure people with limited English proficiency can meaningfully access health and social services. Detailed information on the specific responsibilities of Contractors regarding linguistic competence is available on the Office of Civil Rights (OCR) website at [www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/index.html](http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/index.html).

**Exhibit A**  
**HIV Care Program and Minority AIDS Initiative**  
**Scope of Work**

4. Coordinate with state and federal programs to low-income individuals with HIV to ensure such individuals are aware of the services available under Ryan White Part B.
5. To the maximum extent practical, ensure that HIV-related health care and support services delivered pursuant to a program established with assistance provided under Ryan White Part B will be provided without regard to the immigration status, ability to pay, and current or past health condition of the individual with HIV disease.
6. Maintain documentation of written referral relationships with entities considered key points of access to healthcare systems for the purpose of facilitating early intervention services for individuals diagnosed as being HIV positive.
  - a. Work with consortia, service providers, and individuals with HIV/AIDS to identify key points of entry.
  - b. Monitor the use of referral and linkage agreements by funded service providers.
7. Contractors required to complete Early Identification of Individuals with HIV/AIDS (EIIHA) Plans will comply with OA Management Memorandum 15-04 (see [www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2015-04.pdf](http://www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2015-04.pdf)) to ensure clients diagnosed with HIV are rapidly linked to care or referred to preventive services, if negative.
8. Work with local planning council or other HIV planning group to improve linkages to care and strengthen the continuum of care. Additionally, if Contractor decides to amend contract by adding or reducing budget amount, then the contractor must involve an HIV planning or advisory body in the decision-making process.
9. Ensure HCP funds are not used to:
  - a. Make cash payments to intended recipients of services.
  - b. Develop, promote, or advertise about HIV services that target the general public.
  - c. Generate broad scope awareness activities about HIV services that target the general public.
  - d. Support employment, vocational, or employment-readiness services.

**B. HCP Services**

The HIV core medical and support care services must be provided under specific HRSA-defined service categories. Grantees must ensure that RWHAP Part B services are provided within the scope of the service category definitions

**Exhibit A**  
**HIV Care Program and Minority AIDS Initiative**  
**Scope of Work**

provided by HRSA/HAB, which can be found in the Ryan White Services Report (RSR) Instructions available online (see <https://careacttarget.org/library/ryan-white-hiv-aids-program-services-report-rsr-instruction-manual>). Additional information can be found in the OA's *HCP and MAI Program Guidance* on the OA website at [www.cdph.ca.gov/programs/aids/Pages/TOACareProviders.aspx](http://www.cdph.ca.gov/programs/aids/Pages/TOACareProviders.aspx).

**Core medical services** are a set of essential, direct health care services provided to Ryan White clients who are HIV-positive or HIV-indeterminate (infants <2 years only), with one exception. HIV-negative clients may receive HIV counseling and testing services under Early Intervention Services. The Ryan White HIV/AIDS Program legislation specifies that the following 13 core medical services are allowable.

- Outpatient/ambulatory medical care
- AIDS Drug Assistance Program treatments
- Local AIDS pharmaceutical assistance
- Oral health care
- Early intervention services
- Health insurance premium and cost-sharing assistance
- Home health care
- Medical nutrition therapy
- Hospice services
- Home and community-based health services
- Mental health services
- Substance abuse services (outpatient)
- Medical case management, including treatment adherence services.

**Support services** are a set of services needed to achieve medical outcomes that affect the HIV-related clinical status of a person living with HIV/AIDS. Support services may be provided to HIV-positive and HIV indeterminate clients (infants <2 years only) as needed. Support services may also be provided to HIV-affected clients. HIV-affected clients include family members or partners of an HIV-positive client. The services provided to HIV-affected clients must always support a medical outcome for the HIV-positive client or HIV-indeterminate client (infants <2 years only). The Ryan White HIV/AIDS Program legislation specifies that the following 16 support services are allowable.

- Case management (non-medical)
- Child care services
- Emergency financial assistance
- Food bank/home-delivered meals
- Health education/risk reduction
- Housing services
- Legal services
- Linguistics services (interpretation and translation)

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- Medical transportation services
- Outreach services
- Psychosocial support services
- Referral for health care/supportive services
- Rehabilitation services
- Respite care
- Substance abuse services (residential)
- Treatment adherence counseling

HCP Contractors, who provide HCP services directly and/or subcontract with HCP service providers, shall ensure the following HCP service requirements are met.

1. Develop and implement a comprehensive system of care and support services that actively engages individuals who know their HIV status but are not accessing services, that reaches out to people who are HIV positive but unaware of their HIV status, and that is coordinated and integrated with other service delivery systems as appropriate.
2. Ensure comprehensive, ongoing medical services to individuals with HIV/AIDS. Services must be based on HRSA Core Medical Services, which include the HRSA service category, Outpatient/Ambulatory Medical Care, or, if these services are not funded by HCP, the Contractor must document the availability of primary medical care for HIV-positive persons in the service area.
3. For contractors that are Local Health Departments, ensure the existence of a local health care system that provides a safety net of care for all people living with HIV/AIDS in the jurisdiction; and demonstrate coordination with local and statewide HIV surveillance activities.
4. Develop and maintain working relationships, and coordinate an integrated system of service delivery, with entities who provide key points of entry into medical care, including but not limited to emergency rooms, substance abuse treatment programs, detoxification centers, adult and juvenile detention facilities, California Department of Corrections and Rehabilitation, Transitional Case Management Program (TCMP) for incarcerated populations, Sexually Transmitted Disease (STD) clinics and Disease Investigative Specialists, HIV counseling and testing sites, ADAP enrollment sites, Partner Services, mental health programs, homeless shelters, health care points of entry specified by the State, federally qualified health centers, migrant health centers, community health centers, health services for the homeless, family planning grantees, blood banks, and non-profit and for profit private entities that provide comprehensive primary care services to populations at risk for HIV. The coordinated, integrated system of care must be informed by HIV epidemiological data and other data sources and should include leveraged resources. The Contractor shall keep documentation of these working relationships.

**Exhibit A**  
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**Scope of Work**

5. Funded service providers should integrate, and work collaboratively, with other such services and coordinate with other available programs (including Medi-Cal), to ensure continuity of care and prevention services of individuals with HIV is enhanced.
6. Convene an advisory and/or focus groups at least **annually** to provide input to the Contractor on issues such as needs assessment, service delivery plans, and comprehensive planning. The Contractor shall maintain minutes and/or documentation of the advisory or focus group meetings.

The advisory and/or focus group, should be made up of representatives from state, federal, and local programs that provide health services and education and prevention services; non-profit and for-profit community-based agencies; staff from other key points of entry into medical care, who either provide services to individuals with HIV/AIDS, or who may have contact with HIV positive individuals who are not in care or not aware of their HIV status; individuals with HIV, consumers, and advocates, etc. The advisory group provides information to the Contractor regarding health services delivery and the needs of individuals with HIV/AIDS living within the community.

If consumer representation is not available for an advisory/focus group, then a venue (e.g., survey, focus group) must be provided to identify consumer concerns and feedback that will be used for planning purposes.

7. Conduct assessment of HIV/AIDS service needs for the geographic service area at least once every three years. Review and update the assessment annually, if needed. For Contractors who are:
  - a. Non-Part A grantees ensure that no more than five percent (5%) of the allocation is utilized to plan, conduct, and evaluate the needs assessment process. Needs assessment activities may not be billed to OA more than once during a three-year contract period. A Service Delivery Plan based on the needs assessment must be submitted to OA.
  - b. Part A grantees, the assessment and planning costs should be budgeted under the Part A award. A Comprehensive Plan must be submitted to OA, rather than the Service Delivery Plan, unless the Part A grantee is collaborating with OA on the statewide integrated plan and needs assessment.
8. Ensure documentation of all services is maintained and made available for review, as requested for monitoring and auditing purposes.
9. Ensure services are responsive to the needs of the clients in the service area, are sensitive to linguistic, ethnic, and cultural differences of the population(s) being served, and that services are linguistically and culturally appropriate.

**Exhibit A**  
**HIV Care Program and Minority AIDS Initiative**  
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10. Ensure that rural case management services link available community support services to specialized HIV medical services.
11. Contractors providing oral health services will define and specify the limitations or caps on providing oral health services.
12. Ensure that HCP funds are used to support syringe exchange programs only if and when OA approves their use.
13. Work collaboratively with the Partner Services Coordinator in the local health department and develop procedures to ensure that Partner Services is available for the appropriate HCP clients, per HCP Management Memorandum 15-06 (see [www.cdph.ca.gov/programs/aids/Documents/HCPMM15-06PartnerServices.pdf](http://www.cdph.ca.gov/programs/aids/Documents/HCPMM15-06PartnerServices.pdf)).
14. Comply with HRSA Policy Clarification Notice #13-04 and OA's Management Memorandum 14-01 regarding pursuit of enrollment with clients who are eligible for comprehensive health care coverage (see [www.hab.hrsa.gov/manageyourgrant/pinspals/pcn1304privateinsurance.pdf](http://www.hab.hrsa.gov/manageyourgrant/pinspals/pcn1304privateinsurance.pdf) and [www.cdph.ca.gov/programs/aids/Documents/RW%20Part%20B%20MM%2014-01\\_082014.pdf](http://www.cdph.ca.gov/programs/aids/Documents/RW%20Part%20B%20MM%2014-01_082014.pdf)). Screening and reassessment of client eligibility must be completed and documented every six months to determine continued eligibility for Ryan White services.

**Please Note:** OA encourages Contractors to use the Medi-Cal eligibility determination documentation from the Automated Eligibility Verification System (AEVS) for HCP eligibility/recertification for those clients on Medi-Cal. This document will validate address, income (under 138% Federal Poverty Level) and insurance. Contractors must continue to screen for payer of last resort prior to providing services.

15. Ensure that eligibility policies do not deem a veteran living with HIV ineligible for Ryan White services due to eligibility for Department of Veterans Affairs (VA) health care benefits. All policies and procedures regarding veterans must adhere to HRSA Policy Notice 16-01 (see <http://hab.hrsa.gov/affordablecareact/clarificationservicesveterans.pdf>).
16. Ensure that eligibility policies do not deem an American Indian or Alaskan Native living with HIV as ineligible for Ryan white services due to eligibility to receive the same services from the Indian Health Services (IHS), regardless of whether or not those IHS services are available and accessible. All policies and procedures regarding American Indians or Alaskan Natives must adhere to HRSA Policy Notice 07-01 (see <http://hab.hrsa.gov/manageyourgrant/pinspals/indiansnatives0701.html>).

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17. Ensure and document that all staff involved in eligibility determination have participated in required training.
18. Annually evaluate the cost-effectiveness of the mechanisms used to deliver comprehensive care.
19. Comply with HCP Management Memo 14-02 regarding using Ryan White funds for services partially covered by Medi-Cal, Denti-Cal, private insurance or other eligible benefits (see [www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2014-02.pdf](http://www.cdph.ca.gov/programs/aids/Documents/HCP%20MM%2014-02.pdf)).
20. Ensure compliance with the following requirements regarding imposition of charges for services, for those providers who charge for services:
  - a. In the case of individuals with an income less than or equal to one hundred percent (100%) of federal poverty guidelines (FPG) (see [www.aspe.hhs.gov/poverty](http://www.aspe.hhs.gov/poverty)), the provider will not impose charges on any such individual for the provision of services under the contract.
  - b. In the case of individuals with an income greater than one hundred percent (100%) of the FPG, the provider:
    - i. Will impose charges on each such individual for the provision of such services; and
    - ii. Will impose charges according to a schedule of charges that is made available to the public.
  - c. In the case of individuals with an income between the FPG in Columns A and B (see table below), the provider will not, for any calendar year, impose charges exceeding the percentage in Column C of the client's annual gross income:

Column A: Client's income is greater than	Column B: Client's income does not exceed	Column C: Charges are not to exceed
100% of FPG	200% of FPG	5% of the client's annual gross income
200% of FPG	300% of FPG	7% of the client's annual gross income
300% of FPG	--	10% of the client's annual gross income

**C. MAI Services**

The goal of MAI is to increase access to, and engagement in, HIV/AIDS medical care for HIV-positive persons of color, including access to ADAP, Medi-Cal, or other appropriate drug assistance program. This is achieved by providing outreach and

**Exhibit A**  
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treatment education services to HIV-positive persons of color who have never been in care, or who have been lost to care. Additional information can be found in the OA's *HCP and MAI Program Guidance* on the OA website at [www.cdph.ca.gov/programs/aids/Pages/tOACareProviders.aspx](http://www.cdph.ca.gov/programs/aids/Pages/tOACareProviders.aspx).

In accordance with HRSA guidance, outreach services and treatment education are the only allowable service categories for MAI funding. These service categories are designed to meet the needs of persons of color in order to ensure that minority clients can access, engage in, and remain in care and treatment; receive help in adhering to treatment; and be provided with education and support that will enable them to become active participants in their own health care and improve their overall quality of life. MAI outreach and treatment education services are defined as follows:

**Outreach** – Those activities typically performed by an outreach worker that results in: (1) Identifying HIV-positive persons of color who know their status but have never been in care or who have been lost to HIV medical care; (2) Removing barriers that have prevented access to HIV medical care, and (3) Establishing engagement in HIV medical care. Outreach services should be conducted at times and in places where there is a high probability that persons of color with HIV infection will be reached.

MAI outreach services do not include routine HIV counseling and testing or HIV prevention education. These services may be provided on a case-by-case basis for a specific MAI client only when the service is necessary to remove a barrier to care for that client.

**Treatment Education** - The provision of health education, treatment adherence and risk reduction information to HIV-positive persons of color who know their HIV status but are not accessing medical care or to HIV-positive persons of color who are lost to care. Information includes educating clients living with HIV about how to communicate with medical providers, the importance of treatment adherence, how to manage medication side effects, how to understand their laboratory results, how to improve their health status, how to reduce HIV transmission, and identify medical and psychosocial support services and counseling that are available locally.

MAI Contractors, who provide MAI services directly and/or subcontract with MAI service providers, shall ensure the following MAI service requirements are met.

1. Employ MAI outreach staff or support other activities to identify HIV-positive persons of color who are out-of-care or lost-to-care and gradually engage them in appropriate HIV care and treatment services. Priority populations are those out-of-care, HIV-positive persons of color who have been unable or unwilling to access services for HIV, despite an awareness of their positive serostatus. As a member of the MAI team, the outreach staff person will take actions to reduce or eliminate any cultural or other barriers that prevent access to and/or continued engagement in HIV care services.

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- a. It is strongly recommended that MAI outreach staff be culturally and linguistically competent “street-level” workers who reflect the communities they serve. Highly recommended is experience in two or three of the following areas: street-based outreach, HIV counseling and testing, health education or HIV case management.
  - b. MAI outreach staff are to take actions to reduce or eliminate any cultural or other barriers that prevent access to and/or continued engagement in care and treatment services. This individual links and supports the client in accessing suitable HIV care and treatment services.
  - c. In lieu of outreach positions, MAI funds can also support outreach/treatment education activities or interventions for HIV-positive persons of color, as determined at the local level and approved by OA.
2. Provide services that identify and engage HIV-positive persons of color who know their HIV status but are not accessing medical care, to reach out to persons of color who are HIV-positive but unaware of their HIV status, and/or to locate and reestablish access for HIV-positive persons of color who have been lost to care.
  3. Work with existing community resources and entities that serve as key points of entry into medical care, including but not limited to emergency rooms, substance abuse treatment programs, TCMF for those individuals released from state correctional institutions, detoxification centers, adult and juvenile detention facilities, STD clinics, HIV counseling and testing sites, mental health programs, homeless shelters, Federal Qualified Health Centers, migrant health centers, Indian Health Services clinics, Black Infant Health Programs, etc. to coordinate and integrate HIV care service delivery.
  4. Plan and deliver MAI outreach and treatment education services in coordination with local HIV prevention outreach programs and other HIV services providers to avoid duplication of effort.
  5. Coordinate MAI planning efforts with all other local funding streams for HIV/AIDS to ensure that HCP funds are the payer of last resort, maximize education and outreach efforts to link individuals to ADAP and other appropriate program, and reduce any duplication.
  6. Ensure MAI clients have access to, and are enrolled in, ADAP, Medi-Cal, or other appropriate program(s) providing HIV medications.

**Reporting and Data Collection Requirements**

**A. Progress Reports**

**Exhibit A**  
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1. HCP and MAI Contractors are required to submit a Mid-Year Progress Report and an Annual Progress Report for each contract year. The Progress Report is an opportunity for the Contractor to describe their HCP and MAI programs, services provided, progress and accomplishments, and to identify any problems or technical assistance needs, as well as those of their subcontractors.
2. The HCP and MAI Progress Reports are due to OA according to the following schedule:

<b>Report</b>	<b>Reporting Period</b>	<b>Due Date</b>
Mid-Year Progress Report	April 1 – September 30	November 15
Annual Progress Report	October 1 – March 31	May 15

3. The HCP and MAI Progress Report Forms are available on the OA website at [www.cdph.ca.gov/programs/aids/Pages/HCPForms.aspx](http://www.cdph.ca.gov/programs/aids/Pages/HCPForms.aspx).

**B. Data Collection**

1. The HCP Contractor shall ensure that HCP client service providers meet the following data collection requirements.
  - a. Collect the HCP minimum data set. The HCP minimum dataset includes data elements required by (a) HRSA to complete the Ryan White Program Service Report (RSR), selected HAB Quality Management (QM) indicators, and the Women, Infants, Children, and Youth Report, and (b) OA for its development of reports, statistical tables, and program evaluations.
  - b. Directly enter data into ARIES within two weeks from a client's date of service. Client service providers may import data into ARIES from other data collection systems only if they obtain prior written approval from OA (see ARIES Policy Notice G3 at <http://www.cdph.ca.gov/programs/aids/Documents/APN-G3.pdf>).
  - c. Electronically submit the RSR through HAB's RSR Web Application System. The RSR is comprised of two reports: (1) the Provider Report and (2) the Client Report. The Client Report contains an XML file with their client-level data on Ryan White-funded clients and services regardless of payor source. Client service providers must submit their completed RSR to the RSR Web Application System by February 19 each year. The RSR reporting period is January 1 through December 31 of the previous year. Client service providers must check the RSR Web Application System until notified that their RSR has been successfully submitted to HRSA. Client service providers may be contacted by OA to resolve any data quality problems (e.g., missing data) with their RSRs.

**Exhibit A**  
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2. The MAI Contractor shall ensure that MAI client service providers meet the following data collection requirements.
  - a. Collect the data elements identified on the ARIES Data Collection Guidelines for State-Funded Minority AIDS Initiative (MAI) Providers and enter them into ARIES.
  - b. Directly enter data into ARIES Outreach Services Module within two weeks from a client's date of service.

**Clinical Quality Management Requirements**

- A. HCP and MAI Contractors are required to have a Clinical Quality Management (CQM) Plan and to ensure that all service providers have a CQM process in place to increase the percentage of persons with diagnosed HIV infection in their service area who are virally suppressed to at least 80 percent. CQM plans must be submitted to OA on an annual basis before the end of the first quarter (June 30).
- B. HCP Contractors and client service providers shall run the HAB QM Indicator Report on Viral Load Suppression in ARIES quarterly. They shall assess the reports to determine which clients are not virally suppressed, develop a strategy using CQM tools to ensure clients are virally suppressed, and then follow up with clients to ensure that they achieve viral suppression.
- C. HCP Contractors will report on their progress toward meeting the viral load suppression indicator in their mid-year and annual progress report.
- D. HCP and MAI Contractors will ensure that peer review will be conducted to assess the quality and appropriateness of health and support services.

**Exhibit B**  
Budget Detail and Payment Provisions

**1. Invoicing and Payment**

- A. In no event shall the Contractor request reimbursement from the State for obligations entered into or for costs incurred prior to the commencement date or after the expiration of this Agreement.
- B. 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 Line Items amounts specified in Attachment I, of this Exhibit.
- C. Invoices shall include the Agreement Number and shall be submitted not more frequently than monthly in arrears. Each invoice for the quarter shall be submitted for payment no more than forty-five (45) 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  
Sacramento, CA 95899--7426

- D. 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.

**E. Amounts Payable**

The amounts payable under this agreement shall not exceed:

- 1) \$82,736 for the budget period of 04/01/16 through 3/31/17.
- 2) \$80,355 for the budget period of 04/01/17 through 3/31/18.
- 3) \$80,355 for the budget period of 04/01/18 through 3/31/19.

**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.

**Exhibit B**  
Budget Detail and Payment Provisions

- 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.

**4. 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 K)**".

**5. 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.
- B. 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.
- C. Line item shifts meeting this criteria shall not require a formal agreement amendment.
- D. The Contractor shall adhere to State requirements regarding the process requesting approval to line item shifts.
- E. Line item shifts may be proposed/requested by either the State or the Contractor.

**6. 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.

**Exhibit B**  
Budget Detail and Payment Provisions

- 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.

**7. 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 agreeable between 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.

**8. Travel and Per Diem Reimbursement**

Any reimbursement for necessary travel and per diem shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Human Resources (Cal HR). If the Cal HR 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 authorization from the CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

**Exhibit B - Attachment I  
HIV Care Program**

Budget Year 1 (April 1, 2016 - March 31, 2017), Year 2 (April 1, 2017-March 31, 2018), Year 3 (April 1, 2018-March 31, 2019)

A. Personnel	SOW Reference	Annual Salary Range	Year (1)			Year (2)			Year (3)			Totals
			FTE	Avg. Salary	Budget	FTE	Avg. Salary	Budget	FTE	Avg. Salary	Budget	
Public Health Nurse	II A.1	\$63,025-\$83,025	0.14	\$73,025	\$10,223	0.14	\$73,025	\$10,223	0.14	\$73,025	\$10,223	\$30,669
Administrative Analyst	II A.1	\$58,931-\$78,931	0.02	\$68,931	\$1,034	0.02	\$68,931	\$1,034	0.02	\$68,931	\$1,034	\$3,102
Office Technician II	II A.1	\$40,404-\$60,404	0.02	\$50,404	\$983	0.02	\$50,404	\$983	0.02	\$50,404	\$983	\$2,949
Prevention Specialist	II A.1	\$41,997-\$61,997	0.46	\$51,997	\$23,918	0.46	\$51,997	\$23,918	0.46	\$51,997	\$23,918	\$71,754
<b>Total Salaries and Wages</b>					<b>\$36,158</b>			<b>\$36,158</b>			<b>\$36,158</b>	<b>\$108,474</b>
<b>Fringe Benefits</b>				Percentage			Percentage			Percentage		
				62.20%	\$22,490		62.20%	\$22,490		62.20%	\$22,490	\$67,470
<b>Total Personnel</b>					<b>\$58,648</b>			<b>\$58,648</b>			<b>\$58,648</b>	<b>\$175,944</b>
<b>B. Operating Expenses</b>	SOW Reference				Budget			Budget			Budget	
Total Operating Expenses					\$0			\$0			\$0	\$0
<b>C. Capitol Expenditures</b>	SOW Reference				Budget			Budget			Budget	
Total Capitol Expenditures					\$0			\$0			\$0	\$0
<b>D. Other Cost</b>	SOW Reference				Budget			Budget			Budget	
Contractors Non-Personnel Costs ①	II A.1				\$23,345			\$20,964			\$20,964	\$65,273
<b>Total Other Costs</b>					<b>\$23,345</b>			<b>\$20,964</b>			<b>\$20,964</b>	<b>\$65,273</b>
<b>E. Indirect Costs</b>					Budget			Budget			Budget	
Total Indirect Costs				Percentage	\$743		Percentage	\$743		Percentage	\$743	\$2,229
				1.3%			1.3%			1.3%		
<b>Total Costs</b>					<b>\$82,736</b>			<b>\$80,355</b>			<b>\$80,355</b>	<b>\$243,446</b>

① Contractors Non-Personnel Costs Associated Directly with Services - includes Food Vouchers, Travel Vouchers, Emergency Financial Assistance, referral for direct client services.

**Exhibit D**  
**Special Terms and Conditions**  
**(Rev 10/15)**

*(For Cooperative Agreement in accordance with HSC 38070)*

The provisions herein apply to this Agreement unless the provisions are removed by reference, 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. 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, 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 g of this provision. Paragraph c of this provision 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 g of this provision. Paragraph b of this provision 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,

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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 **exceeding** \$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 purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.

f. The Contractor 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 at any time.

g. For all purchases, the Contractor 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 for inspection or audit.

## **2. 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)

a. Wherever the terms equipment and/or property are used in this provision, the definitions in provision 1, 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.

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- (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 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 to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor 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

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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 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 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 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 shall only use said vehicles for the performance under the terms of this Agreement.
- (3) The Contractor agree that all operators of motor vehicles, purchased/reimbursed 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 or furnished by CDPH under the terms of this Agreement, the Contractor, 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 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.
- (b) The Contractor 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 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.

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- (d) The Contractor 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, 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.
  - [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 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 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.

### 3. 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 exceeding \$5,000 for any articles, supplies, equipment, or services. The Contractor shall obtain at least three competitive quotations which should be submitted or adequate justification provided for the absence of bidding.
- 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.

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- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) exceeding \$5,000 are subject to the prior review and written approval of 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 and shall be the subcontractor's sole point of contact for all matters related to the performance and payment during the term of 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."

**4. 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.

**5. 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 services performed.

**6. Intellectual Property Rights**

**a. Ownership**

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- (1) Except as set forth below and 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. Notwithstanding the foregoing or any other language in this Agreement, Contractor and not CDPH shall own Intellectual Property relating to any clinical lab test or lab assay that is made, conceived, derived from or reduced to practice by contractor, regardless of whether it results directly /indirectly from this Agreement ("Clinical Tests or Assays")
- (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 other than Clinical Tests or Labe Assays made, conceived, derived from, or reduced to practice by the subcontractor,

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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) 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.
- (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., 2014, 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. 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

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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.

**e. 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.

**f. 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

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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.

**g. Survival**

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

**7. 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

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not apply to necessary staff meetings or training sessions held for the staff of the Contractor in order to conduct routine business matters.

**8. Confidentiality of Information**

The Contractor and its employees, agents, or subcontractors shall:

- a. 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. Not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. Promptly transmit to the CDPH Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. 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 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.

**9. 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.

**10. 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.

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- (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 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 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.

**11. 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.

**12. Prohibited Use of State Funds for Software**

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Special Terms and Conditions

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.

**13. 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 section f (3)(a) below for an example.

Exhibit D  
Special Terms and Conditions

- (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.

**14. Cancellation**

- 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.

Exhibit D  
Special Terms and Conditions

- 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 cancellation or termination, 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

**1. Insurance Requirements**

A. General Provisions Applying to All Policies

- 1) Coverage Term – Coverage needs to be in force for the complete term of the Agreement. If insurance expires during the term of the Agreement, a new certificate and required endorsements must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must comply with the original Agreement terms.
- 2) Policy Cancellation or Termination and Notice of Non-Renewal – Contractor shall provide to the CDPH within five (5) business days following receipt by Contractor a copy of any cancellation or non-renewal of insurance required by this Contract. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the CDPH may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 3) Premiums, Assessments and Deductibles – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- 4) Primary Clause – Any required insurance contained in this Agreement shall be primary and not excess or contributory to any other insurance carried by the CDPH.
- 5) Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VI. If Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- 6) Endorsements – Any required endorsements requested by the CDPH must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- 7) Inadequate Insurance – Inadequate or lack of insurance does not negate Contractor’s obligations under the Agreement.
- 8) Use of Subcontractors - In the case of Contractor’s utilization of Subcontractors to complete the contracted scope of work, Contractor shall include all Subcontractors as insured under Contractor’s insurance or supply evidence of the Subcontractor’s insurance to the CDPH equal to policies, coverages, and limits required of Contractor.

B. Insurance Coverage Requirements

Contractor shall display evidence of certificate of insurance evidencing the following coverage:

- 1) Commercial General Liability – Contractor shall maintain general liability with limits not less than \$1,000,000 per occurrence for bodily injury and property damage combined with a \$2,000,000 annual policy aggregate. The 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. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor’s limit of liability.

**Exhibit E**  
Additional Provisions

The policy shall be endorsed to include, "The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

- 2) Automobile Liability (when required) – Contractor shall maintain motor vehicle liability insurance with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Agreement involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required. The policy shall be endorsed to include, "The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 3) Worker's Compensation and Employer's Liability (when required) – Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of \$1,000,000 are required. When work is performed on State owned or controlled property the policy shall contain a waiver of subrogation endorsement in favor of the State. This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 4) Professional Liability (when required) – Contractor shall maintain professional liability covering any damages caused by a negligent error; act or omission with limits not less than \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of Agreement work.
- 5) Environmental/Pollution Liability (when required) – Contractor shall maintain pollution liability for limits not less than \$1,000,000 per claim covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site as well as transportation and proper disposal of hazardous materials. The policy shall be endorsed to include, "The State of California, its officers, agents, employees, and servants as additional insured, but only insofar as the operations under this Agreement are concerned." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.
- 6) Aircraft Liability (when required) - Contractor shall maintain aircraft liability with a limit not less than \$3,000,000. The policy shall be endorsed to include, "The State of California, its officers, agents, employees and servants as additional insured, but only insofar as the operations under this Agreement." This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

**Federal Terms and Conditions**

*(For Federally Funded Cooperative 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.

This exhibit contains provisions that require strict adherence to various contracting laws and policies.

**Index**

1. Federal Contract Funds
2. Federal Equal Employment Opportunity Requirements
3. Debarment and Suspension Certification
4. Covenant Against Contingent Fees
5. Lobbying Restrictions and Disclosure Certification
6. Additional Restrictions
7. Human Subjects Use Requirements
8. Financial and Compliance Audit Requirements
9. Audit and Record Retention
10. Federal Requirements

## 1. 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.

## 2. Federal Equal Opportunity Requirements

Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH).

- 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.

### 3. Debarment and Suspension Certification

- a. By signing this Agreement, the Contractor/Subcontractor 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 of Feb. 18, 1986, appear at 51 FR 6370, 3 CFR, 1986 Comp., p. 189, unless otherwise noted.
- 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.

#### 4. 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.

#### 5. 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.

6. **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.”

7. **Human Subjects Use Requirements**

(Applicable only to federally funded agreements 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.

## 8. Financial and Compliance Audit Requirements

By signing this Agreement, the Contractor/Subcontractor agrees to abide by all requirements specified in 2 CFR 200 *et seq.*, 2 CFR *et seq.*, as applicable, including but not limited to obtaining an annual audit, and any subsequent federal regulatory additions or revisions.

- 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 in 2CFR Part 200) and expends \$750,000 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 2CFR Part 200. 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 a single audit, the Contractor must also submit a certification indicating the Contractor has not expended \$750,000 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".

## 9. Audit and Record Retention

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

- 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 Title 2 of the Code of Federal Regulations, Part 200 (2CFR Part 200).

#### **10. Federal Requirements**

Contractor agrees to comply with and shall require all subcontractors, if any, to comply with all applicable Federal requirements including but not limited to the United States Code, the Code of Federal Regulations, the Funding Opportunity Announcement, the Notice of Award, the funding agreement, and any memoranda or letter regarding the applicable Federal requirements.

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 subcontractor's, subcontracts, and contracts under 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 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.

**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  
0348-0046

<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><b>Federal Use Only</b></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.



**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 *Public Health Administrative Manual (PHAM)*, Section 1-1000 and Section 3-1320.)

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 PHAM, Section 1-1020.)

**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 PHAM, Section 1-1050.)

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 PHAM, Section 17-4000.)
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, 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.

**Exhibit I**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

This Information Privacy and Security Requirements Exhibit (For Non-HIPAA/HITECH Act Contracts) (hereinafter referred to as "this Exhibit") sets forth the information privacy and security requirements Contractor is obligated to follow with respect to all personal and confidential information (as defined herein) disclosed to Contractor, or collected, created, stored, transmitted or used by Contractor for or on behalf of the California Department of Public Health (hereinafter "CDPH"), pursuant to Contractor's agreement with CDPH. (Such personal and confidential information is referred to herein collectively as "CDPH PCI".) CDPH and Contractor desire to protect the privacy and provide for the security of CDPH PCI pursuant to this Privacy Exhibit and in compliance with state and federal laws applicable to the CDPH PCI.

- I. Order of Precedence: With respect to information privacy and security requirements for all CDPH PCI, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and CDPH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- II. Effect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, and the information privacy and security requirements Contractor is obligated to follow with respect to CDPH PCI disclosed to Contractor, or collected, created, stored, transmitted or used by Contractor for or on behalf of CDPH, pursuant to Contractor's agreement with CDPH. When applicable the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
- III. Definitions: For purposes of the agreement between Contractor and CDPH, including this Exhibit, the following definitions shall apply:
  - A. Breach: "Breach" means:
    1. the unauthorized acquisition, access, use, or disclosure of CDPH PCI in a manner which compromises the security, confidentiality or integrity of the information; or
    2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(f).
  - B. Confidential Information: "Confidential information" means information that:
    1. does not meet the definition of "public records" set forth in California Government Code section 6252(e), or is exempt from disclosure under any of the provisions of Section 6250, et seq. of the California Government Code or any other applicable state or federal laws; or
    2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word "confidential" by CDPH; or
    3. is "personal information" as defined in this Exhibit.
  - C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information.
  - D. Personal Information: "Personal information" means information, in any medium (paper, electronic, oral) that:
    1. by itself directly identifies or uniquely describes an individual; or

**Exhibit I**  
**Information Privacy and Security Requirements**  
**(For Non-HIPAA/HITECH Act Contracts)**

2. creates a substantial risk that it could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
3. meets the definition of "personal information" set forth in California Civil Code section 1798.3(a) or
4. is one of the data elements set forth in California Civil Code section 1798.29(g)(1) or (g)(2); or
5. meets the definition of "medical information" set forth in either California Civil Code section 1798.29(h)(2) or California Civil Code section 56.05(g); or
6. meets the definition of "health insurance information" set forth in California Civil Code section 1798.29(h)(3); or
7. Is protected from disclosure under applicable state or federal law.

E. Security Incident: "Security Incident" means:

1. an attempted breach; or
2. the attempted or successful modification or destruction of CDPH PCI, in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, including this Exhibit; or
3. the attempted or successful modification or destruction of, or interference with, Contractor's system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of CDPH PCI.

F. Use: "Use" means the sharing, employment, application, utilization, examination, or analysis of information.

- IV. Disclosure Restrictions: The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any CDPH PCI. The Contractor shall not disclose, except as otherwise specifically permitted by the agreement between Contractor and CDPH (including this Exhibit), any CDPH PCI 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.
- V. Use Restrictions: The Contractor and its employees, agents, or subcontractors shall not use any CDPH PCI for any purpose other than carrying out the Contractor's obligations under its agreement with CDPH.
- VI. Safeguards: The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDPH PCI, including electronic or computerized CDPH PCI. At each location where CDPH PCI is located, the Contractor 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 Contractor's operations and the nature and scope of its activities in performing its agreement with CDPH, including this Exhibit, and which incorporates the requirements of Section VII, Security, below. Contractor shall provide CDPH with Contractor's current and updated policies.
- VII. Security: The Contractor shall take any and all steps reasonably necessary to ensure the continuous security of all computerized data systems containing CDPH PCI. These steps shall include, at a minimum, complying with all of the data system security precautions listed in the Contractor Data Security Standards set forth in Attachment 1 to this Exhibit.

**Exhibit I**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

- VIII. Security Officer: At each location where CDPH PCI is located, the Contractor shall designate a Security Officer to oversee its compliance with this Exhibit and for communicating with CDPH on matters concerning this Exhibit.
- IX. Training: The Contractor shall provide training on its obligations under this Exhibit, at its own expense, to all of its employees who assist in the performance of Contractor's obligations under Contractor's agreement with CDPH, including this Exhibit, or otherwise use or disclose CDPH PCI.
- A. The Contractor shall require each employee who receives training to certify, either in hard copy or electronic form, the date on which the training was completed.
  - B. The Contractor shall retain each employee's certifications for CDPH inspection for a period of three years following contract termination.
- X. Employee Discipline: Contractor shall impose discipline that it deems appropriate (in its sole discretion) on such employees and other Contractor workforce members under Contractor's direct control who intentionally violate any provisions of this Exhibit.
- XI. Breach and Security Incident Responsibilities:
- A. Notification to CDPH of Breach or Security Incident: The Contractor shall notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach (as defined in this Exhibit), **or within twenty-four (24) hours by email or fax** of the discovery of any security incident (as defined in this Exhibit), unless a law enforcement agency determines that the notification will impede a criminal investigation, in which case the notification required by this section shall be made to CDPH immediately after the law enforcement agency determines that such notification will not compromise the investigation. Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), below. If the breach or security incident is discovered after business hours or on a weekend or holiday and involves CDPH PCI in electronic or computerized form, notification to CDPH shall be provided by calling the CDPH IIT Service Desk at the telephone numbers listed in Section XI(c), below. For purposes of this Section, breaches and security incidents shall be treated as discovered by Contractor as of the first day on which such breach or security incident is known to the Contractor.
- Contractor shall take:
- 1. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
  - 2. any action pertaining to a breach required by applicable federal and state laws, including, specifically, California Civil Code section 1798.29.
- B. Investigation of Breach: The Contractor shall immediately investigate such breach or security incident. As soon as the information is known and subject to the legitimate needs of law enforcement, Contractor shall inform the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
    - 1. what data elements were involved and the extent of the data involved in the breach, including, specifically, the number of individuals whose personal information was breached; and

**Exhibit I**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

2. a description of the unauthorized persons known or reasonably believed to have improperly used the CDPH PCI and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the CDPH PCI, or to whom it is known or reasonably believe have had the CDPH PCI improperly disclosed to them; and
  3. a description of where the CDPH PCI is believed to have been improperly used or disclosed; and
  4. a description of the probable causes of the breach or security incident; and
  5. whether Civil Code sections 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.
- C. Written Report: The Contractor shall provide a written report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer as soon as practicable after the discovery of the breach or security incident. 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 breach or security incident, and measures to be taken to prevent the recurrence of such breach or security incident.
- D. Notification to Individuals: If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:
1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. Contractor shall inform the CDPH Privacy Officer of the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
  2. cooperate with and assist CDPH in its notification (including substitute notification) to the individuals affected by the breach.
- E. Submission of Sample Notification to Attorney General: If notification to more than 500 individuals is required pursuant to California Civil Code section 1798.29, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:
1. electronically submit a single sample copy of the security breach notification, excluding any personally identifiable information, to the Attorney General pursuant to the format, content and timeliness provisions of Section 1798.29(e). Contractor shall inform the CDPH Privacy Officer of the time, manner and content of any such submissions, prior to the transmission of such submissions to the Attorney General; or
  2. cooperate with and assist CDPH in its submission of a sample copy of the notification to the Attorney General.
- F. 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 written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the agreement to which it is incorporated.

**Exhibit I**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer (and CDPH IT Service Desk)
See the Scope of Work exhibit for Program Contract Manager	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0506 Sacramento, CA 95899-7377  Email: <a href="mailto:privacy@cdph.ca.gov">privacy@cdph.ca.gov</a> Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413  Email: <a href="mailto:cdphiso@cdph.ca.gov">cdphiso@cdph.ca.gov</a> Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

- XII. Documentation of Disclosures for Requests for Accounting: Contractor shall document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of CDPH PCI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of personal information as required by applicable state or federal law.
- XIII. Requests for CDPH PCI by Third Parties: The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any CDPH PCI emanating from third parties to the agreement between Contractor and CDPH (and not emanating from an Individual for an accounting of disclosures of personal information pursuant to applicable state or federal law), unless prohibited from doing so by applicable state or federal law.
- XIV. Audits, Inspection and Enforcement: From time to time, CDPH may inspect the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit. Contractor shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Program Contract Manager in writing.
- XV. Return or Destruction of CDPH PCI on Expiration or Termination: On expiration or termination of the agreement between Contractor and CDPH for any reason, Contractor shall return or destroy the CDPH PCI. If return or destruction is not feasible, Contractor shall explain to CDPH why, in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above.
- A. Retention Required by Law: If required by state or federal law, Contractor may retain, after expiration or termination, CDPH PCI for the time specified as necessary to comply with the law.
- B. Obligations Continue Until Return or Destruction: Contractor's obligations under this Exhibit shall continue until Contractor returns or destroys the CDPH PCI or returns the CDPH PCI to CDPH; provided however, that on expiration or termination of the agreement between Contractor and CDPH, Contractor shall not further use or disclose the CDPH PCI except as Required by state or federal law.
- C. Notification of Election to Destroy CDPH PCI: If Contractor elects to destroy the CDPH PCI, Contractor shall certify in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer

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Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above, that the CDPH PCI has been destroyed.

- XVI. Amendment: The parties acknowledge that Federal and State laws relating to information security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDPH PCI. The parties agree to promptly enter into negotiations concerning an amendment to this Exhibit consistent with new standards and requirements imposed by applicable laws and regulations.
- XVII. Assistance in Litigation or Administrative Proceedings: Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under the agreement between Contractor and CDPH, available to CDPH at no cost to CDPH to testify as witnesses, in the event of litigation or administrative proceedings being commenced against CDPH, its director, officers or employees based upon claimed violation of laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
- XVIII. 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 Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- XIX. Interpretation: The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with 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 Federal and State laws and regulations.
- XX. Survival: If Contractor does not return or destroy the CDPH PCI upon the expiration or termination of the Agreement, the respective rights and obligations of Contractor under Sections VI, VII and XI of this Exhibit shall survive the termination or expiration of the agreement between Contractor and CDPH.

**Exhibit I**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

**Attachment 1**  
Contractor Data Security Standards

**1. General Security Controls**

- A. **Confidentiality Statement.** All persons that will be working with CDPH PCI 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 PCI. The statement must be renewed annually. The Contractor 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 Contractor's workforce may access CDPH PCI, Contractor 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 Contractor 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 PCI 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 PCI 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 PCI required to perform necessary business functions may be copied, downloaded, or exported.
- F. **Removable media devices.** All electronic files that contain CDPH PCI 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 PCI 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 PCI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation 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 PCI. 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

**Exhibit I**  
**Information Privacy and Security Requirements**  
**(For Non-HIPAA/HITECH Act Contracts)**

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 PCI 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 PCI 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 PCI, or which alters CDPH PCI. 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 PCI 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 PCI 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 PCI can be encrypted. This requirement pertains to any type of CDPH PCI in motion such as website access, file transfer, and E-Mail.
- F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting CDPH PCI 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 PCI 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.

**Exhibit I**  
Information Privacy and Security Requirements  
(For Non-HIPAA/HITECH Act Contracts)

- B. **Log Reviews.** All systems processing and/or storing CDPH PCI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing CDPH PCI 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.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PCI 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.
- B. **Data Backup Plan.** Contractor must have established documented procedures to backup CDPH PCI to maintain retrievable exact copies of CDPH PCI. 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 PCI 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 PCI 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 PCI 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 PCI is contained shall be escorted and CDPH PHI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** CDPH PCI 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.
- D. **Removal of Data.** CDPH PCI must not be removed from the premises of the Contractor except with express written permission of CDPH.
- E. **Faxing.** Faxes containing CDPH PCI 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 PCI shall only be mailed using secure methods. Large volume mailings of CDPH PHI 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.

### 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 15-11056 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

### Agreement by Employee/Contractor to Comply with Confidentiality Requirements

#### Summary of Statutes Pertaining to Confidential Public Health Records and Penalties for Disclosure

All HIV/AIDS case reports and any information collected or maintained in the course of surveillance-related activities that may directly or indirectly identify an individual are considered *confidential public health record(s)* under California Health and Safety Code (HSC), Section 121035(c) and must be handled with the utmost confidentiality. Furthermore, HSC §121025(a) prohibits the disclosure of HIV/AIDS-related public health records that contain any personally identifying information to any third party, unless authorized by law for public health purposes, or by the written consent of the individual identified in the record or his/her guardian/conservator. Except as permitted by law, any person who negligently discloses information contained in a confidential public health record to a third party is subject to a civil penalty of up to \$5,000 plus court costs, as provided in HSC §121025(e)(1). Any person who willfully or maliciously discloses the content of a public health record, except as authorized by law, is subject to a civil penalty of \$5,000-\$25,000 plus court costs as provided by HSC §121025(e)(2). Any willful, malicious, or negligent disclosure of information contained in a public health record in violation of state law that results in economic, bodily, or psychological harm to the person named in the record is a misdemeanor, punishable by imprisonment for a period of up to one year and/or a fine of up to \$25,000 plus court costs (HSC §121025(e)(3)). Any person who is guilty of a confidentiality infringement of the foregoing type may be sued by the injured party and shall be personally liable for all actual damages incurred for economic, bodily, or psychological harm as a result of the breach (HSC §121025(e)(4)). Each disclosure in violation of California law is a separate, actionable offense (HSC §121025(e)(5)).

Because an assurance of case confidentiality is the foremost concern of the California Department of Public Health, Office of AIDS (CDPH/OA), any actual or potential breach of confidentiality shall be immediately reported. In the event of any suspected breach, staff shall immediately notify the director or supervisor of the local health department's HIV/AIDS surveillance unit who in turn shall notify the CDPH/OA Surveillance Section Chief or designee. CDPH/OA, in conjunction with the local health department and the local health officer shall promptly investigate the suspected breach. Any evidence of an actual breach shall be reported to the law enforcement agency that has jurisdiction.

#### Employee Confidentiality Pledge

I recognize that in carrying out my assigned duties, I may obtain access to private information about persons diagnosed with HIV or AIDS that was provided under an assurance of confidentiality. I understand that I am prohibited from disclosing or otherwise releasing any personally identifying information, either directly or indirectly, about any individual named in any HIV/AIDS confidential public health record. Should I be responsible for any breach of confidentiality, I understand that civil and/or criminal penalties may be brought against me. I acknowledge that my responsibility to ensure the privacy of protected health information contained in any electronic records, paper documents, or verbal communications to which I may gain access shall not expire, even after my employment or affiliation with the Department has terminated.

By my signature, I acknowledge that I have read, understand, and agree to comply with the terms and conditions above.

\_\_\_\_\_  
Employee name (print)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor name (print)

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Employer

PLEASE RETAIN A COPY OF THIS DOCUMENT FOR YOUR RECORDS.

CCC-307

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

## **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

## Darfur Contracting Act

Pursuant to Public Contract Code (PCC) sections 10475-10481, the Darfur Contracting Act's intent is to preclude State agencies from contracting with scrutinized companies that do business in the African nation of Sudan. A scrutinized company is a company doing specified types of business in Sudan as defined in PCC section 10476. Scrutinized companies are ineligible to, and cannot, contract with a State agency for goods or services (PCC section 10477(a)) unless obtaining permission from the Department of General Services according to the criteria set forth in PCC section 10477(b).

Therefore, to be eligible to contract with the California Department of Public Health, please initial one of the following three paragraphs and complete the certification below:

1. \_\_\_\_\_ We do not currently have, or we have not had within the previous  
 Initials three years, business activities or other operations outside of the United States.

**OR**

2. \_\_\_\_\_ We are a scrutinized company as defined in Public Contract Code  
 Initials section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b) or submit a contract/purchase order. A copy of the written permission from DGS is included with our bid, proposal or contract/purchase order.

**OR**

3. \_\_\_\_\_ We currently have, or we have had within the previous three years,  
 Initials business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind this company to the clause listed above. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>



**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only:  
**AGENDA NUMBER**  
21

- Consent Hearing  
 Scheduled  
 Departmental  
 Closed Session  
 Correspondence Action  
 Informational  
 Public

**FROM:** HEALTH & HUMAN SERVICES

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Workshop on Resource Families as Local Placement Options for Children and Youth

**DEPARTMENTAL RECOMMENDATION:**

Request your Board conduct a workshop with staff from Health and Human Services to provide an update on the implementation of California's Continuum of Care Reform efforts, including the potential beneficial local impacts on placement options for children and youth placed through Juvenile Probation and Child Welfare.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

New California law requires counties to begin implementation of the Continuum of Care Reform by January 1, 2017. This workshop is a brief review of the requirements, and will show how these intersect in a positive and beneficial manner with on-going discussions and ideas in Inyo County to redesign and improve the delivery of juvenile services.

A draft Power Point presentation is included, but may be updated for the workshop.

**ALTERNATIVES:**

Board could choose not to hold this workshop.

**OTHER AGENCY INVOLVEMENT:**

Inyo County Juvenile Court, Inyo County Probation, California Department of Social Services, Mono County Social Services, Mono County Probation

**FINANCING:**

There is no funding involved in this workshop presentation.

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

	Approved: _____ Date: _____
<b>BUDGET OFFICER:</b>	<b>BUDGET AND RELATED ITEMS</b> <i>(Must be reviewed and approved by the Budget Officer prior to submission to the Board Clerk.)</i>  Approved: _____ Date: _____

***DEPARTMENT HEAD SIGNATURE:*** \_\_\_\_\_ Date: \_\_\_\_\_  
 (Not to be signed until all approvals are received)

*AN UPDATE:*  
CALIFORNIA'S  
REFORM OF FOSTER &  
GROUP HOME CARE  
OF CHILDREN &  
YOUTH, AND THE  
SERVICES TO THEIR  
FAMILIES

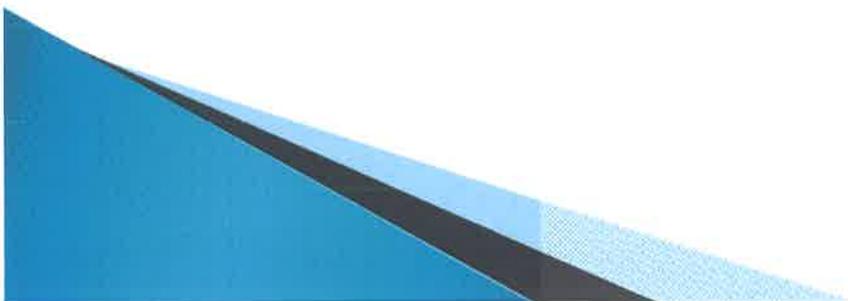
**DRAFT**

What will it mean for Inyo  
County?

August 2, 2016

# Thus far since November 2015...

- ▶ Many County discussions about juvenile services
- ▶ Included and separate from those discussions, was information about upcoming changes in California and the nation, relative to Foster Home/Group Home Care and front-end services
- ▶ An invigorated local Foster Family program has potential to save significant County General Funds
- ▶ Recommendations coming to you on August 16 regarding juvenile services redesign include consideration for local Foster Family/Relative placement as an alternative to 72-hour hold placements, as well as to longer-term detentions
- ▶ Given these important and exciting state/federal policy changes, and the opportunity to improve long-term outcomes for youth, today will focus in more detail



# What are the Changes in State/Federal Policy About?

“This policy change results from well-documented outcomes demonstrating that residing long-term in group homes with shift-based care is not in the best interest of children and youth. Not only is it developmentally inappropriate, it frequently creates lifelong institutionalized behaviors and contributes to higher levels of involvement with the justice system and to poor educational outcomes.”

*from State of California Report on the Continuum  
of Care Reform, January 2015*

## California's AB 403:

▶ Focuses on improving outcomes

Local and Statewide *short-term* outcomes are good, but in the *long-term*, too many youth leave the juvenile services world and enter the adult criminal justice system, as acknowledged by our local criminal justice partners.

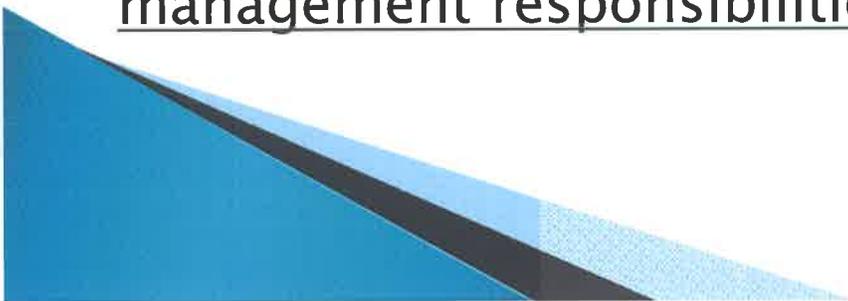
In Inyo, our evaluation of the effectiveness of our services will shift to include a longer-term focus on (1) keeping youth from moving into our local Jail as young adults, and (2) improving their functioning as adults in their communities.

- ▶ Requires significant changes to current out-of-home placements and supports

Extended group home placements for youth are ending. California will license only Short-Term Treatment Centers with the goal of returning youth to their home communities and schools, and, if not returned home, placed “with relatives or someone familiar, or, when this is not possible or appropriate, with other caregiving families that are able to meet their physical, social, and emotional needs until they can return home.”

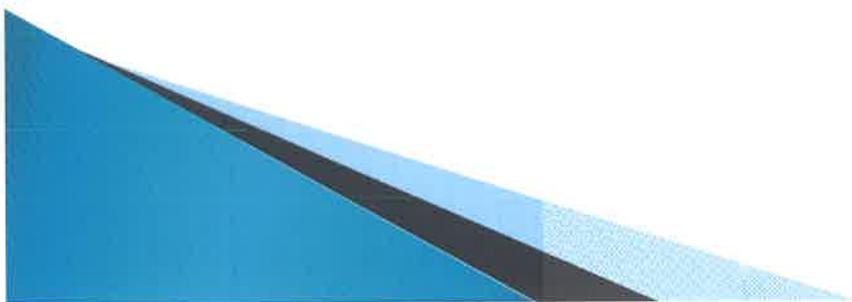
Terminology with respect to foster care will shift to “resource families” as “home-based family care,” and includes relatives, foster homes, guardianship and adoptive homes.

The “practice of public agencies, private agencies & service providers should be aligned through a common core practice model, with county child welfare and probation agencies retaining their case management responsibilities.”



- ▶ Improves the front-end assessment process

Both Child Welfare (CPS) and Juvenile Probation will be required to use a state approved standardized tool that assesses appropriate level of placement for a youth, as well as services needed. Begins in 2017 for Child Welfare and in 2018 for Probation.



- ▶ Occurs in context of other system changes that serve to increase access to existing federally-entitled services

This includes Medi-Cal funded (federal Medicaid) local **Mental Health** services.

This also includes significant reforms in the **juvenile justice** system “...in recognition of the fact that detaining youth far from home is not ideal, but may be necessary for a small percentage of probation youth who have committed the most serious offenses. At the same time, in order to serve those probation youth whose needs can be appropriately met safely in least restrictive, family-based settings, sufficient capacity in home-based family care must be developed.”

**On-going, repeated family engagement will be required** in order to ensure effectiveness of case management services provided by Child Welfare and Juvenile Probation.

**Diligence, persistence and insistence** will be required to promote families' enhanced capacity to provide for their youth's needs.

- ▶ Requires local Child and Family Teams to develop recommendations for case plans for children and youth

“Use of a team approach...” that brings together “ individuals that engage with the child or youth and family in assessing, planning and delivering services..... increases efficiency, and thus reduces costs, by increasing coordination of formal services and integrating the natural and informal supports available to the ...youth and family.”

“In the development of the case plan, the probation agency shall consider any recommendations of the child and family team, as defined...”  
“The agency shall document the rationale for any inconsistencies between the case plan and the child and family team recommendations.”

- ▶ California's Welfare and Institutions Code has been updated to require that, beginning January 1, 2017, probation youth "...shall be entitled to participate in age-appropriate extracurricular, enrichment and social activities." A state or local regulation or policy shall not prevent, or create barriers to, participation in those activities."

Board may recall the calendar of proposed redesigned juvenile services for Inyo County which includes after-school extracurricular, enrichment and social activities for probation youth. You will see this again on August 16.

## Additional federal requirements for case management activities for Child Welfare and Juvenile Probation youth placed both locally and out-of-the area:

- ▶ Concerted efforts must be made to preserve continuity of family relationships and other connections for youth in placement – includes parents, siblings, school, tribe, faith, language, neighborhood, school, friends
- ▶ Families have enhanced capacity to provide for their children's needs – includes caregiver relationships, social competencies, coping skills, self-esteem, independent living for teens, recreational needs, employment training, etc.

Again, this will require Social Workers and Probation Officers to provide intensive case management services with full family engagement.

# Local efforts since January 2016 to enhance bed capacity for probation youth

Towards the juvenile justice reform effort, HHS has been working diligently with Probation and with local resource families since January 2016 to update the message about who these probation youth are, and why the low-level offenders can, with appropriate supports and case management by our Social Workers and Probation Officers, be managed in local homes.

Most recently, sitting Inyo County Juvenile Court Judge Brian Lamb joined our monthly meeting of Inyo resource families to encourage acceptance of low-level probation youth and to hear from those resource families about what other supports they need in order to consider accepting these youth.

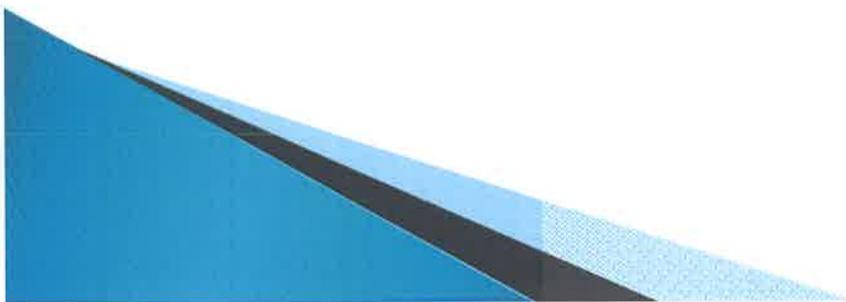
# Additional on-going local readiness efforts.....

HHS continues to fully engage internal Behavioral Health leadership in discussions about their therapeutic role in the reform efforts.

Additional federal Medicaid (Medi-Cal) funds can be drawn down for an additional psychotherapist to augment the necessary 24/7 case management activities of both Child Welfare and Probation to keep youth in “home-based family care.”

# HHS Outreach to Date

- ▶ Monthly dinner meetings with resource families focused on increasing bed capacity for probation youth and identification of training needs
- ▶ At least weekly conversations with Mono County Social Services and monthly meetings around new AB 403 requirements, implementation concerns, and opportunities for regionalization
- ▶ June communications with Mono County CAO, Board Chair, Probation Chief
- ▶ Hosted a May 2016 meeting with California Department of Social Services leadership, along with HHS and Probation leadership in Mono, Alpine and Inyo Counties around AB 403 implementation challenges in the Eastern Sierra
- ▶ Summer 2016 meetings with Inyo County Judges Stout and Lamb, Chief Probation Officer Thomson regarding juvenile services changes. Juvenile Court Judge Lamb sees proposed changes as “a real gamechanger,” but more casework for Probation. His familiarity with research on outcomes was exciting and supportive.



- ▶ Hosted a July meeting between Judge Lamb and resource families, and attended by Probation Deputy Chief Mark Olsen, to enhance the conversation between resource families and the Juvenile Court caring for probation youth locally
- ▶ Monthly updates to HHS staff, and in particular, Child Welfare Social Workers, around proposed redesign of Inyo's juvenile services.

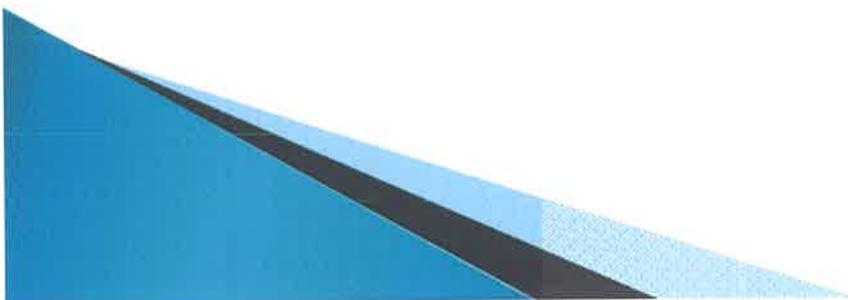
**"It's a different mentality of case management."**

- ▶ **former PO, now SW**  
Hosted a training on "Leading Staff Through Transformational Change" to HHS managers & supervisors, and Deputy Chief Probation Officer Mark Olsen, and to Probation Administrative Legal Secretary Alisa Lemke
- ▶ June and July meetings with Superintendent of Schools, and with School Superintendents from Death Valley, Bishop and Lone Pine
- ▶ Bi-weekly teleconferences with the State on implementation updates and challenges



## *Next steps and KEYS FOR SUCCESS*

- ▶ In the absence of on-going local Juvenile Hall beds for low-level juvenile offenders who do not pose a community safety risk -- including both during the 72-hour hold window as well as during longer-term placements -- more community-based bed availability will have to be developed.
- ▶ On-going positive engagement and messaging from leadership in Probation and HHS is critical!
- ▶ HHS is pursuing becoming a Foster Family Agency. One benefit would be enhanced funding to administer the new requirements, as well as increased rates for resource families.
- ▶ Associated training will have to be provided for resource families.
- ▶ Board will have to consider some staff augmentation, through HHS state/federal funds, of therapeutic personnel for resource families and biological families, as well as administration and coordination of more expansive foster care recruitment and retention efforts.



Counties have until September 1, 2016, to submit their plans for meeting these requirements. HHS will be submitting a joint plan for both Probation and HHS about expanding resource family bed capacity.



**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only:  
**AGENDA NUMBER**

22

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

**FROM:** CLERK OF THE BOARD  
**By:** Darcy Ellis, Assistant to the Clerk of the Board

**FOR THE BOARD MEETING OF:** July 28, 2016

**SUBJECT:** Approval of Minutes

**DEPARTMENTAL RECOMMENDATION:** - Request approval of the minutes of the Board of Supervisors regular meeting of June 28, 2016.

**SUMMARY DISCUSSION:** - The Board is required to keep minutes of its proceedings. Once the Board has approved the minutes as requested, the minutes will be made available to the public via the County's web page at [www.inyocounty.us](http://www.inyocounty.us).

**ALTERNATIVES:** - Staff awaits your Board's changes and/or corrections.

**OTHER AGENCY INVOLVEMENT:** - n/a

**FINANCING:** n/a

**APPROVALS**

BUDGET OFFICER:	BUDGET AMENDMENTS <i>(Must be reviewed and approved by Budget Officer prior to being approved by others, as needed, and submission to the Assistant Clerk of the Board.)</i>
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 Assistant Clerk of the Board.)</i> <p align="right">Approved: _____ Date _____</p>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the Assistant Clerk of the Board.)</i> <p align="right">Approved: _____ Date _____</p>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the Assistant Clerk of the Board.)</i> <p align="right">Approved: _____ Date _____</p>

**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

23

- Consent     Departmental     Correspondence Action     Public Hearing  
 Scheduled Time for 1:00 PM     Closed Session     Informational

**FROM:** Planning Department

**FOR THE BOARD MEETING OF:** August 2, 2016

**SUBJECT:** Medical Marijuana Dispensaries and Cultivation Workshop

**DEPARTMENTAL RECOMMENDATION:** Request the Board of Supervisors, regarding options for regulating or prohibiting medical marijuana cultivation and/or dispensary, collective or cooperative operation in unincorporated Inyo County, consider zoning regulations and other regulations, and provide direction.

**SUMMARY DISCUSSION:** Inyo County does not have an ordinance regulating medical marijuana dispensary operation or cultivation in unincorporated Inyo County. The purpose of this workshop is to give the Board an opportunity to consider whether and how the County will regulate medical marijuana dispensaries and cultivation, and, if desired, to provide direction to staff regarding the path forward. This discussion seeks to identify mechanisms of land use planning and regulation and other paths forward with regard to the medical use of marijuana within Inyo County.

The County's current practice regarding regulating medical marijuana/cultivation through zoning is that such activity has been prohibited by Inyo County Code Section 18.78.020, which states "Nothing in this title shall establish rules and regulations where in conflict with state or federal law." Through the Zoning Code update process, the Planning Commission and Board affirmed this approach. However, this issue is being brought before your Board of Supervisors again for consideration in response to continued interest in dispensaries and cultivation in Inyo County and the changing State regulatory climate.

Against this backdrop, there will be a ballot measure on this November's election that could expand legalization of marijuana beyond medicinal use to include adult recreational use (non-medical). As your Board considers what, if any changes, it wants to make to the County's regulation of medical marijuana, it may also want to contemplate the effects of passage of the "Regulate and Tax Adult Use of Marijuana" initiative. Accordingly, this report and today's workshop will also introduce considerations relative to local regulation and taxation of non-medical marijuana to avoid making changes, if any, piecemeal in the County's current regulatory framework.

**BACKGROUND:** On May 12, 2015 the Board took part in a two hour workshop to discuss medical marijuana options for regulating or banning dispensaries and cultivation in Inyo County. Staff opened with an introduction of statutory background and issues to consider (see Attachment A). Staff briefly discussed regulation options for dispensaries and cultivation, and provided examples of regulating means and cultivation regulation. County Deputy Sheriff Obayashi spoke on his experience in Merced County and involvement in an opposition statement towards medical marijuana. His concern for dispensaries was due to the atmosphere of tolerance and entitlement created by the allowance of medical marijuana; the stress on resources to officiate, prosecute, and consult on issues that arise; crime increase due to the cash business; and quality of life deterioration. County staff members raised concerns about regulating pesticides and fertilizers in cultivation because marijuana is not listed as a commodity thus pesticide or fertilizer use is unregulated. The Board also noted that more public input is desired. To generate public input staff was instructed to give plenty of public notice and schedule the next meeting on medical marijuana as a Public Hearing.

Concluding the workshop, the Board directed staff to (1) research what other cities/counties in the area are doing; (2) identify the strengths and weaknesses of the Town of Mammoth Lakes' current ordinance; (3) identify what benefits would arise from permitting medical marijuana; (4) identify potential impacts if medical marijuana were prohibited; (5) identify simple alternatives to maintain status-quo; and lastly (6) what the minimum effective measure could be to provide the County maximum control without becoming too complicated.

**STATUTORY BACKGROUND:** In 2015 California Governor Jerry Brown signed a package of bills titled the Medical Marijuana Regulation and Safety Act (MMRSA). This package consists of three bills creating enforceable framework for governing every aspect of the medical marijuana business in California. The bills - Assembly Bill 266, Assembly Bill 243, and Senate Bill 643 create a structure to license, tax and regulate the industry as well as the funding mechanisms for the agencies that oversee the operations. The laws are scheduled to go into effect in 2018 with some provisions phased in earlier.

New State legislation pertinent to the issue will potentially have great effects on the County. On November 8, 2016 the "Regulate and Tax Adult Use of Marijuana" initiative will be on the State ballot for public vote. If passed, the measure would legalize recreational marijuana and hemp sale under state law, enact a sales tax of 15 percent and a cultivation tax of \$9.25 per ounce for flowers and \$2.75 per ounce for leaves, with exceptions for qualifying medical marijuana sales and cultivation. Under the Act, individuals could possess up to one ounce of dried marijuana and grow up to six plants. The Act does not contain a dual licensing requirement; business can apply for a state license without proof of compliance with local regulation. However the Act does contain an express provision preserving local control and authority to prohibit businesses needing a license. Personal cultivation outdoors may also be banned while indoor grows could be reasonably regulated.

Inyo County may regulate medical marijuana dispensaries, collectives, cooperatives, grow sites or mobile dispensaries through zoning and land use regulations. Regulation may range from minor restrictions to a total ban. If dispensaries are permitted by the County, the dispensary operators (and participants) would be responsible for complying with state *in addition* to the County regulations. If desired, County regulations for medical marijuana may incorporate non-medical marijuana business by establishing an inclusive definition of marijuana businesses or, specifying allowance of each use type with parameters unique to the medical/recreational.

**FINDINGS:** Below are the staff findings to the topics requested by the Board.

1. Research alternatives by other city/counties;
  - A. Los Angeles Co.: The County has banned medical marijuana dispensaries.
    - City of Lancaster: The City has prohibited medical marijuana cultivation and dispensaries.
  - B. Mono Co.: The County does not have an ordinance.
    - The Town of Mammoth Lakes allows for two cooperative dispensaries to exist, the dispensaries may cultivate on the premises provided an affidavit is acquired. The Town allows for medical patient outdoor cultivation with given setbacks, security, screening, and distance from schools. Indoor cultivation by a patient is permitted with an allowed electrical load limit and the grow cannot be a home occupation.
  - C. Kern Co.: Dispensaries and cultivation are not permitted
    - City of Ridgecrest: Medical marijuana cultivation and dispensaries are prohibited
    - California City: Medical marijuana dispensaries are prohibited. The City is currently discussing cultivation allowance.

- City of Tehachapi: The City has a moratorium on any medical marijuana businesses until after the State ballot vote in November 2016.
  - D. San Bernardino Co.: Medical cultivation is allowed by patients indoors only. Dispensaries are expressly prohibited.
  - E. City of Bishop: The Bishop City Council will be hearing a second reading of a marijuana ordinance on July 25<sup>th</sup>, 2016. The ordinance would approve marijuana businesses and sets limitations and standards on the use, businesses, and cultivation of medical marijuana. Planning staff will report on the outcome of that discussion during the Board workshop.
  - F. The State of Nevada: Medical marijuana cultivation and dispensaries are legal. The number of dispensaries per county is based on the county's population.
    - Nye Co., NV: allows for one dispensary by special use permit but multiple cultivation centers are allowed in commercial and industrial zones. The single dispensary permit has been issued; a total of 10 applicants were received and each was scored using a system the County created. 17 permits have been issued for cultivation centers of varying size, indoor only. Two cultivation centers are operating now while 15 are waiting on the outcome of Nevada's ballot for recreational marijuana. As a condition of the special use permit applicants must present to the County Water Board and Sheriff's Department for permission. A water impact plan, site development plan, and security and transportation plan must be accepted before special use permit is granted.
2. Research the Town of Mammoth Lake's current ordinance and operation;  
An interview was conducted with the Town of Mammoth Lake's (TOML) Police Chief and Community and Economic Development Manager in order to learn more about the ordinance. The TOML allows for up to two medical marijuana cooperatives within the Commercial zone, not on the ground floor along Primary and Secondary Active Frontages; cultivation is permitted on the cooperative's premises and in Industrial Zones with a Use Permit; and indoor and outdoor residential cultivation is allowed for patients. To obtain the permits applications are reviewed by the Police Department and Community and Economic Development Department before review and approval by the Planning Commission.

The interviewees explained that staff will be re-writing the ordinance after the State ballot initiative in November 2016 regardless of the ballot's outcome. Interviewees explained that the current ordinance is difficult to enforce and may be a little outdated. Deciding which two applicants were awarded the dispensary permits was too subjective and would have been a difficult process if more had applied for the permits. The interviewees would rather have had a lottery, similar to how California Alcoholic Beverage Control operates. When the ordinance passed in 2010 there were only three applicants; the two applicants awarded the permits have continually renewed the permit, through the Police Department, thus preventing any others from establishing a dispensary. The two operating dispensaries have had no conflicts with the Town in following the ordinance and the interviewees expressed the importance of a good relationship and communication with the business owners.

The TOML does not currently tax the dispensaries any differently than another business but may decide to in the future. The interviewees also noted that crime had neither increased nor decreased since the ordinance was passed, and a total of three criminal incidents have occurred at the dispensaries since 2010.

Lastly, it should be noted that the ordinance was brought to the Town as a result of a public ballot measure. Medical marijuana had been discussed by the Town Council but finding no resolution the issue was put to public vote. The voters approved medical marijuana cooperatives and specified that they could be located within the Commercial General or Industrial zoning designations provided that they obtained a use permit from Planning and were at least 500 feet apart. More specific regulations for cooperative were adopted by

the Town Council, establishing requirements for the permit, operational standards, and membership standards.

An interview was also conducted with the owner of Mammoth Lakes Wellness (MLW), one of the two dispensaries in the TOML. The owner felt that the Town is a model of success in regulating medical marijuana. He expressed that the communication between the Town, police, and his business was very helpful. With regards to the business, MLW has seen continued consistency with little rise or decline. Contrary to what some believe, the business “does not rack in cash”. The owner expressed that it is hard work and he pays for expenses just as any other business does. The owner believes his clientele are more medicinal users that prefer the medical recommendation of marijuana to alleviate regular illnesses rather than using prescription drugs. Overall he believes more people are becoming comfortable with medical marijuana and are using it to treat a variety of illnesses. During seasonally busy times MLW is utilized by Town visitors whom are not comfortable traveling with marijuana and the dispensary has regular clients from throughout Mono and Inyo Counties that travel to the store because it is the only place to obtain the medicine. In preventing youth use, MLW requires patrons to be 21 years of age or older, a stricter requirement than the State’s allowance of 18 years of age to acquire the medical recommendation. The owner also does outreach to educate the general public on the medicinal use of marijuana. Regarding crime, MLW has had two instances throughout its six year existence. Both instances were unsuccessful robberies conducted by local youth. In both instances the perpetrators had conducted other crimes prior to attempting a MLW robbery. The owner’s surveillance system provided evidence to identify the perpetrators in both cases and convict them of the crimes against MLW and other crimes committed during the event. The owner believes his surveillance system is of assistance to neighboring businesses too.

3. Potential benefits that may arise by allowing and regulating marijuana business activities;
  - Increase in taxable revenue from sales of marijuana at dispensaries, cultivation sales and property tax.
  - Increase in jobs; both limited term jobs would exist during the start-up phases (construction) and long term jobs would be created for daily operations of cultivation and at dispensaries.
  - Properties where marijuana business would take place may increase in value.
  - Provide residents with an alternative medicine.
  - Patient migration to the County may occur by patients seeking marijuana.
  - Marijuana tourism occurs in areas that legalize medical marijuana use.
  - Provides a regulated and safe means of producing and distributing marijuana.
  
4. Potential negative impacts resulting from allowing and regulating marijuana business activities:
  - Increased source of marijuana may lead to abuse by minors or others.
  - Potential increase in crime (robbery).
  - Potential crackdown may occur by Federal law enforcement.
  - Businesses adjacent to marijuana facilities may be negatively impacted by smell/users of business/etc.
  - Environmental resource issues may arise from water-use and/or cultivation fertilizers/pesticides.
  - Potential nuisance issues from the smell.

5. Alternatives to maintain status-quo:

During the 2015 Board Workshop there was brief discussion of using a moratorium to prevent any medical marijuana operations for the time being. Under California Government Code section 65858, a city or a county may adopt an interim ordinance such as this to temporarily prohibit certain land uses, including particular types of businesses, in the community, commonly referred to as a “moratorium ordinance.” California law requires

at a moratorium ordinance contain findings stating why the ordinance is needed to address a current and immediate threat to public health, safety, or welfare. It takes immediate effect to prevent a "land rush" of applications to establish new uses before standards can be put in place. The delay in permits would allow the county to subject all new uses to the new standards.

The Board may also choose to keep the current response to medical marijuana as is; "Nothing in this title shall establish rules and regulations where in conflict with state or federal law."

6. What the minimum effective measure could be to provide the County maximum control without becoming too complicated?

Establish a new "MJ" overlay zone specifically defining where medical marijuana businesses are permitted, with size and general organizational requirements (operational hours, security, screening, etc.). The County may set a limit on the number of each business types allowed in the overlay zone.

**ALTERNATIVES:** The County's current zoning law prohibits medical marijuana dispensaries and cultivation under the principles of permissive zoning, as well as under Inyo County Code Section 18.78.020 ("[n]othing in this title shall establish rules and regulations where in conflict with state or federal law"). Mobile deliveries of marijuana, which is arguably not a land use issue, may currently be prohibited based on the fact that a business license would be required for that activity, but the license could be denied based on the conflict with federal law. If the County desired to have an unambiguous ban on mobile deliveries it would be beneficial to create an express ban in the County code pursuant to the County's general police powers.

On the other hand, the County could instead promulgate regulations to conditionally permit medical marijuana dispensaries, cultivation, and/or deliveries through the Zoning Ordinance and/or other means. Should the County move in this direction, taxes and fees could also be established (although voter approval is required for taxes – which is discussed further below).

Staff has researched regulating medical marijuana and is proposing several possible actions. The land use actions can be taken directly by the Board or can be put to the public for approval during an election. The proposed actions are as follows:

1. Complete ban prohibiting marijuana business activity: Total bans on dispensaries, cooperatives and collectives have been upheld by the courts in numerous court cases to date. If the County decides to enforce a total ban, medical marijuana patients have access to medical marijuana through dispensaries and deliveries in Mammoth Lakes (2 dispensaries present). The Board may also adopt an express ban on mobile deliveries in order to clarify any uncertainty in the existing law.
2. Seek voter approval for general direction or specific new land use regulations. The Board may, but is not required to, seek voter approval for new land use regulations. The Board may also seek a simple advisory vote from the public asking what general direction the County should take on this issue. For example, Sierra County recently posed the following question to its voters: "[s]hould the County of Sierra adopt an ordinance which would allow commercial marijuana activities within the County, including but not limited to cultivation, processing, distribution, warehousing and transportation of marijuana?"

A matrix of considerations for a ballot initiative is addressed in Attachment A for both medical and recreational marijuana use. Please note that there are different time schedules and costs for the ballot depending on which election the measure is included. For matters put to a vote on the upcoming general election, the local ballot measure must be submitted at least 88 days before the general election date. So

any ballot measure for the November 8, 2016 general election will need to be filed no later than August 12, 2016, which is obviously a very short timeframe. The anticipated cost for this, not including staff time, will be approximately \$500 - \$1000. The Board could also call for a special election at some other future date. A special election may cost between \$20-30,000.

3. The Board could amend the zoning code to allow marijuana-related activities as a "Use" within desired zones such as Commercial (dispensaries) and/or Industrial and/or Open Space and/or Agriculture and/or Residential (cultivation/manufacturing).
4. The Board could create a Conditional/Special Use Permit to permit marijuana-related land use activity on case-by-case instances. The Use Permit may include required findings to impose restrictions and desired outcomes. In applying for the Permit, the County may require the production of plans to identify operational standards and/or site standards and/or design requirements and/or security plans and/or environmental plans.
5. Not expressly allow cultivation/dispensaries/collectives/cooperatives but allow for a restrictive special permit to do so, i.e. Marijuana Permit. All marijuana business would have to apply for and receive the permit in order to do business. In doing so, the Board and staff would be able to consider each use with respect to their departmental goals.
6. The Board could create an Overlay Zone to conditionally permit medical marijuana elements in specific areas. With this option the County may identify desirable areas for the cultivation/dispensaries/manufacturing of medical marijuana regardless of zone classification. A Conditional Use Permit may still be required along with design standards in order to create greater control.

**TAXATION:** Under the State law, sales tax applies to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property. Local taxation for medical marijuana businesses may be treated such as any other business is taxed and no new protocols would need to be established. The status quo taxation is the Sale and Use tax, set at 8% within the County.

Local taxes could also be established to generate revenue. Such taxes could take the form of a sales tax, an excise tax (e.g. DTT or TOT), a parcel tax (e.g. utility taxes), or a business license tax (via Revenue and Taxation Code section 7284 and Business and Professions Code section 16100). As it pertains to medical marijuana, SB 643, which is one of the three bills that comprise the Medical Marijuana Regulation and Safety Act (MMRSA), allows counties to tax certain activities related to the cultivation and sale of medical marijuana. Namely, these activities include a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products. This tax may apply countywide or only to the unincorporated areas.

Please be reminded that, any local taxes require voter approval, and the approval required depends on the type of tax to be imposed. For example, a general tax, where the revenue goes into the general fund, requires a simple majority voter approval. Whereas a special tax, where the revenue is earmarked for a specific purpose, requires a 2/3 voter approval. There are additional nuances to what types of taxes may apply countywide v. only in the unincorporated areas. If the Board is inclined to seek voter approval for a local tax, given the short time frame for getting a measure on the ballot for November 8<sup>th</sup>, it will be wise to prioritize.

### PROPERTY TAX

For property, a valuation would be applied to the business by the Assessor, which could fluctuate with the market. The Auditor would then use that value to apply a tax rate for the parcel and the Tax Collector would be responsible for collecting that tax. This taxation scheme is outside of the Board's ability to control.

### BUSINESS LICENSE

With guidance from the Tax Collector the Board may establish a business license program in order to track marijuana related businesses. However to do so may be a lengthy process because the Department does not have any software, fee schedule, ordinance, or program for doing so.

AGRICULTURAL COMMISSIONER/DIRECTOR OF WEIGHTS & MEASURES: California Department of Food and Agriculture (CDFA) is working on a cultivation licensing framework. They expect to be able to issue licenses by 2018. CDFA is working on a statewide CEQA document that will cover their licensing program, and will cover counties that follow their framework. If the county put together its own licensing structure for cultivation, CEQA compliance is required.

When CDFA has licensing available, it will require cultivators to present their local license before the state license can be issued. CDFA staff has stated that if there is no local license available, the state will not issue a license. The Agricultural Commissioner/Director of Weights and Measures would be responsible for developing a permit structure and setting fees in establishing the local license.

Pesticide use is generally regulated and most pesticides are illegal to use on marijuana. Currently, cultivators that intend to use pesticides must obtain an operator ID number from the County Agricultural Commissioner.

### NEXT STEP:

1. The Board may direct staff to continue research on one or more of the above Alternatives.
2. The Board may direct staff to taken only those actions necessary to maintain the status quo of marijuana land use and business activity being unlawful.
3. The Board may direct staff to draft a regulatory framework for permitting dispensaries and/or cultivation and/or manufacturing of medical marijuana within County boundaries.
4. The Board may direct staff to draft a moratorium for consideration if the State ballot initiative in November for recreational marijuana use passes. A moratorium will provide the County additional time to consider if and how to regulate the local industry.
5. The Board may direct staff to prepare an array of ballot measures to possibly submit to the voters, ranging from complete ban of marijuana business and cultivation to allowance of medical and non-medical marijuana sales, processed and cultivated adhering to State limitations. Timing will be an issue with this step given the details required in any such statutory scheme(s) and the fact that the initiative would need to be agreed upon at the next Board meeting, August 9<sup>th</sup>, in order to meet the August 12<sup>th</sup> deadline to file.
6. The Board may direct staff to prepare language for an advisory ballot measure to be placed on the November election ballot. The initiative would need to be agreed upon at the next Board meeting, August 9<sup>th</sup>, in order to meet the August 12<sup>th</sup> deadline.
7. The Board may direct staff to draft a tax measure for voter approval.

**OTHER AGENCY INVOLVEMENT:** Administrator; Agriculture/Weights and Measures; Assessor; Auditor; Building and Safety; County Counsel; Environmental Health; Health and Human Services; Public Health; Sheriff Department; Treasurer/Tax Collector; Water Department

**FINANCING:** There are minimal costs associated with conducting this workshop; however General Funds could be used for future development and consideration of a Medical Marijuana ordinance.

<b><u>APPROVALS</u></b>	
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 <u>07/28/16</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: _____ 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)

 Date: 7/28/16

Enclosed:

Attachment A: Ballot Measure Matrix for Medical Marijuana and Recreational Marijuana

ATTACHMENT A

allot Measure Matrix

MEDICAL Marijuana	Land Use	Taxation	Initiative	Potential Required licenses and fees
Cultivation	Special use permit? Limit to zones M-1, M-2, OS, R, CB	Tax per ounce (dry/wet?) Tax per plant Tax per square footage of growing area	Allow -Yes/No Where How much cultivation (limit number of plants, allowable wattage, or growing area limit)? Allow on site sales? Allow on site laboratory? Limit number of centers?	Require a license? Require additional fees? One-time fee or an annual, or month, renew fee?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Sales	Special use permit? Limit to zones C, CB, M-1, M-2	General tax on all products (Sales and Use tax)? Itemize taxation per product?	Allow - Yes/No Limit location? Where? How many dispensaries to allow.	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Warehouse	Special use permit? Limit to zones M-1, M-2, C, OS	-	Allow - Yes/No Where? Allow sales, testing, and cultivation at site?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Delivery Service	Special use permit? Limit to zones C, CB, M-1, M-2	Tax? Base tax on Sales and Use?	Allow – Yes/No Come in from other Counties/State?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no

RECREATIONAL Marijuana	Land Use	Taxation	Initiative	Potential Required licenses and fees
Cultivation	Special use permit? Limit to zones M-1, M-2, OS, R, CB	Tax per ounce (dry/wet?) Tax per plant Tax per square footage of growing area	Allow -Yes/No Where How much cultivation (limit number of plants, allowable wattage, or growing area limit)? Allow on site sales? Allow on site laboratory? Limit number of centers?	Require a license? Require additional fees? One-time fee or an annual, or month, renew fee?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Sales	Special Use permit? Limit to zone C, CB, M-1, M-2	General tax on all products (Sales and Use tax)? Itemize taxation per product?	Allow - Yes/No Limit location? Where? How many dispensaries to allow. Separate recreational store from medical?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no

ATTACHMENT A

RECREATIONAL Marijuana	Land Use	Taxation	Initiative	Potential Requirements, licenses and fees
Warehouse	Special Use permit? Limit to zones M-1, M-2, C, OS	-	Allow - Yes/No Where? Allow sales, testing, and cultivation at site?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Delivery Service	Special use permit? Limit to zones C, CB, M-1, M-2	Tax? Base tax on Sales and Use?	Allow – Yes/No Come in from other Counties/State?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no

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**Commissioners**  
**Eric Sklar**, President  
Saint Helena  
**Jacque Hostler-Carmesin**, Vice President  
McKinleyville  
**Anthony C. Williams**, Member  
Huntington Beach  
**Russell E. Burns**, Member  
Napa  
**Peter S. Silva**, Member  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
www.fgc.ca.gov

### Fish and Game Commission



*Wildlife Heritage and Conservation*  
Since 1870

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FISH AND GAME COMMISSION

July 18, 2016

#### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action to add Section 715 and amend Section 702, Title 14, California Code of Regulations, relating to Upland Game Bird Special Hunt Drawing and Application Fee, which will be published in the California Regulatory Notice Register on July 15, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments. Additional information and all associated documents may be found on the Fish and Game Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov).

Karen Fothergill, Department of Fish and Wildlife, phone 916-716-1461, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

**Caren Woodson**  
Associate Governmental Program Analyst

Attachment

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 215, 220, 331, 332 and 1050 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 203, 203.1, 207, 215, 219, 220, 331, 332, 713, 1050, 1055, 1055.1, 1570, 1571, 1572, 1573, 3500, 3682.1, 3683, 3950, 3951, 4302, 4330, 4331, 4332, 4333, 4336, 4340, 4341, 4652, 4653, 4654, 4655, 4657, 4750, 4751, 4752, 4753, 4754, 4755, 4902, 10500 and 10502 of said Code, proposes to amend Section 702 and add Section 715, Title 14, California Code of Regulations, relating to Upland Game Bird Special Hunt Drawing and Application Fee.

### **Informative Digest/Policy Statement Overview**

A new Section 715, Upland Game Bird Special Hunt Drawing, is proposed to establish the application and drawing procedures for wild upland game bird hunt reservations in the Automated License Data System (ALDS). ALDS is the central location for the public to apply for all Department licenses and hunting opportunities. The ALDS drawing process provides more accuracy and flexibility to the public and allows applicants to easily select their first, second and third choice wild bird hunts. A fee of \$5.00 per application for the Upland Game Bird Special Hunt Drawing is proposed to be added in Section 702.

#### **Benefits of the regulations**

The Commission anticipates benefits to the health and welfare of California residents. ALDS provides a single location for the public to apply for all department hunts including big game and waterfowl hunting opportunities. Data collected and compiled through ALDS will be accessible in a consistent format for the Department's use. Adding the Upland Game Bird Special Hunt Drawing to ALDS will provide the same benefits of fairness and flexibility as well as important information necessary to properly manage upland game bird populations.

The Commission anticipates benefits to the State's environment in the sustainable management of natural resources. The proposed regulation could reduce the time required to apply for Upland Game special hunting opportunities and will improve the accuracy of the data collection. Adoption of regulations to increase sustainable hunting opportunity provides for the maintenance of sufficient populations of upland game birds to ensure their continued existence.

#### **Non-monetary benefits to the public**

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action automates an existing hunt drawing process through the use of ALDS. This proposal is economically neutral to business.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates benefits to the health and welfare of California residents. ALDS provides a single location for the public to apply for all department hunts including big game and waterfowl hunting opportunities. Data collected and compiled through ALDS will be accessible in a consistent format for the Department's use. Adding the Upland Game Bird Special Hunt Drawing to ALDS will provide the same benefits of fairness and flexibility as well as important information necessary to properly manage upland game bird populations.

The Commission anticipates benefits to the State's environment in the sustainable management of natural resources. The proposed regulation could reduce the time required to apply for Upland Game special hunting opportunities and will improve the accuracy of the data collection. Adoption of regulations to increase sustainable hunting opportunity provides for the maintenance of sufficient populations of upland game birds to ensure their continued existence.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: July 5, 2016

Valerie Termini  
Executive Director



UNITED STATES  
NUCLEAR WASTE TECHNICAL REVIEW BOARD  
2300 Clarendon Boulevard, Suite 1300  
Arlington, VA 22201-3367

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ADVISOR  
Karyn D. Severson  
External Affairs

July 15, 2016  
For Immediate Release

## **DOE's Activities to Integrate the Management and Disposal of Canisters for Spent Nuclear Fuel and High-level Radioactive Waste Is Focus of U.S. NWTRB August Meeting in Washington, D.C.**

The U.S. Nuclear Waste Technical Review Board will meet in Washington, D.C. on August 24, 2016, to review U.S. Department of Energy (DOE) activities related to integrating the management and disposal of the many different designs of canisters for spent nuclear fuel (SNF) and high-level radioactive waste (HLW) that are currently in service and under development.

The Nuclear Waste Policy Amendments Act (NWPAA) of 1987 charges the Board with conducting an ongoing and independent evaluation of the technical and scientific validity of DOE activities related to implementing the Nuclear Waste Policy Act of 1982.

The meeting will be held at the Westin Washington, D.C. City Center Hotel, 1400 M Street, NW, Washington, DC 20005, 202-429-1700. A block of rooms has been reserved for meeting attendees at a rate of \$149.00 per night. Reservations may be made by phone: (888) 627-9035 or online: <https://www.starwoodmeeting.com/events/start.action?id=1512302524&key=12331FD9>.

***Reservations must be made by Monday, August 1, 2016, to ensure receiving the meeting rate.***

On-site parking at the hotel is available for an overnight rate of \$59 or a daily rate of \$28.00.

The meeting will begin at 8:00 a.m. on Wednesday, August 24, 2016, and is scheduled to adjourn at 5:00 p.m. Among the topics to be discussed at the meeting are descriptions of the canister types currently used and being developed for storing and transporting SNF and HLW, DOE's efforts to create an integrated program for managing and disposing of SNF and HLW canisters, and nuclear industry perspectives on DOE's efforts to develop standardized canisters for commercial SNF. The meeting agenda will be available on the Board's web site: [www.nwtrb.gov](http://www.nwtrb.gov) approximately one

week before the meeting. The agenda may also be requested by e-mail or telephone at that time from Davonya Barnes of the Board's staff.

The meeting will be open to the public, and opportunities for public comment will be provided before the lunch break and at the end of the day. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. Depending on the number of people who sign up to speak, it may be necessary to set a time limit on individual remarks. However, written comments of any length may be submitted, and all comments received in writing will be included in the record of the meeting, which will be posted on the Board's website after the meeting. The meeting will be webcast at: <https://www.webcaster4.com/Webcast/Page/909/15610>, and an archived version of the webcast will be available on the Board's website following the meeting. The transcript of the meeting will be available on the Board's website no later than September 9, 2016.

The Board was established in the NWPAA as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to management and disposal of SNF and HLW and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences.

The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website. For information on the meeting agenda, contact Daniel Ogg: [ogg@nwtrb.gov](mailto:ogg@nwtrb.gov) or Karyn Severson: [severson@nwtrb.gov](mailto:severson@nwtrb.gov). For information on lodging or logistics, contact Eva Moore: [moore@nwtrb.gov](mailto:moore@nwtrb.gov). To request copies of the meeting agenda or the transcript, contact Davonya Barnes: [barnes@nwtrb.gov](mailto:barnes@nwtrb.gov). All four can be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201-3367; by telephone at 703-235-4473; or by fax at 703-235-4495.

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